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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901. 1902.

No. 854. 309.

THE UNITED STATES, APPELLANT,

vs.

GEORGE DEWEY, ADMIRAL U. S. NAVY, ETC.

No. 855. 310.

GEORGE DEWEY, ADMIRAL U. S. NAVY, APPELLANT,

vs.

THE "DON JUAN DE AUSTRIA" ET AL.

No. 856. 311

EDWIN F. STOVELL, ON BEHALF OF HIMSELF AND OFFICERS AND CREW OF THE U. S. STEAMSHIP "NANSHAN," APPELLANT,

vs.

GEORGE DEWEY, ADMIRAL U. S. NAVY, ETC.

APPEALS FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 654.

THE UNITED STATES, APPELLANT,

vs.

GEORGE DEWEY, ADMIRAL U. S. NAVY, ETC.

No. 655.

GEORGE DEWEY, ADMIRAL U. S. NAVY, APPELLANT,

vs.

THE "DON JUAN DE AUSTRIA" ET AL.

No. 656.

EDWIN F. STOVELL, ON BEHALF OF HIMSELF AND OFFICERS AND CREW OF THE U. S. STEAMSHIP "NANSHAN," APPELLANT,

vs.

GEORGE DEWEY, ADMIRAL U. S. NAVY, ETC.

APPEALS FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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a Supreme court of the District of Columbia.

GEORGE DEWEY, ADMIRAL, UNITED STATES Navy, on behalf of himself and the officers and crew of the United States naval force on the Asiatic Station, taking part in the battle of Manila Bay on May 1, 1898, and later captures at the same place; and Edwin F. Stovell, captain, on behalf of himself and the officers and crew of the United States steamer "Nanshan," intervenor,

v.

THE "DON JUAN DE AUSTRIA," "ISLA DE Cuba," "Isla de Luzon," "Leyte," "Mindanao," and other vessels and miscellaneous stores and supplies captured by the fleet under command of libellant.

} No. 559, District court.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1

LIBEL.

[Filed July 20, 1899.]

In the supreme court of the District of Columbia.

GEORGE DEWEY, ADMIRAL, UNITED STATES Navy, on behalf of himself and the officers and crew of the United States naval force on the Asiatic Station, taking part in the battle of Manila Bay on May 1, 1898, and later captures at the same place,

v.

THE "DON JUAN DE AUSTRIA," "ISLA DE Cuba," "Isla de Luzon," "Leyte," "Mindanao," and other vessels and miscellaneous stores and supplies captured by the fleet under command of libellant.

} No. 559, District court.

LIBEL IN PRIZE.

[Filed July 20, 1899. J. R. Young, clerk.]

Libel of George Dewey, Admiral, United States Navy.

To the honorable the justice of the supreme court of the District of Columbia, holding a special term with the jurisdiction of a United States district court:

The libel and complaint of George Dewey, now Admiral in the United States Navy, presented in behalf of himself, as commodore in the United

States Navy, in command of the United States naval force on the Asiatic Station, present in Manila Bay on May 1, 1898, and thereafter,
2 and also on behalf of the officers and enlisted men of the said force so present, and also, so far as by law permitted, on behalf of the United States against all persons claiming any interest in and to the prize property hereinafter set forth, and against said property alleges as follows:

1. That the libellant was, at the time of the captures hereinafter set forth, a commodore in the United States Navy and in command of the United States naval force on the Asiatic Station, including the squadron in and about Manila Bay, Philippine Islands, which squadron under his command on, to wit, the 1st day of May, 1898, in the place aforesaid, consisted of the following vessels, to wit:

Protected cruisers:

U. S. Flagship "Olympia," commanded by Captain Charles V. Gridley, U. S. N.

U. S. S. "Baltimore," commanded by Captain Nehemiah M. Dyer, U. S. N.

U. S. S. "Boston," commanded by Captain Frank Wildes, U. S. N.

U. S. S. "Raleigh," commanded by Captain Joseph B. Coghlan, U. S. N.

Gunboats:

U. S. S. "Concord," commanded by Commander Asa Walker, U. S. N.

U. S. S. "Petrel," commanded by Commander Edward P. Wood, U. S. N.

U. S. revenue cutter "McCulloch," commanded by Captain Daniel B. Hodgson, U. S. Revenue-Cutter Service.

U. S. supply steamer "Nanshan."

U. S. supply steamer "Zafiro."

3 All of said vessels were armed vessels, officered and manned by the United States and under the control of the Navy Department.

2. That war then existed between the United States and the Kingdom of Spain, and that this squadron under libellant's command did on, to to wit, May 1st, 1898, and thereafter, capture from the King of Spain the two protected cruisers, "Isla de Cuba" and "Isla de Luzon," and the unprotected cruiser "Don Juan de Austria," the gunboats "Leyte" and "Mindanao," and other vessels and property belonging to the King of Spain, consisting of anchors, anchor gear and chains, electric apparatus and materials, bags, boxes, chests, blocks, etc., bolts, rivets, nuts, lag screws, washers, brushes and brooms, building material, canvas, cordage and rigging, dry goods, fuel, hardware, miscellaneous instruments and apparatus, lamps and lamp fixtures, leather and belting, lumber and timber, machinery and machine tools, metals and ordnance materials, packing, rubber and hose, paints, oils, chemicals, drugs, etc., pipe fittings, plumbers' and gas-fixture supplies, provisions, ship and boat equipment, stationery, books and blanks, stoves, galleys and fixtures, tools and miscellaneous stores, and also certain guns, ammunition, ships' supplies, and supplies of various kinds from the arsenal at Cavite and the shore batteries defending the harbor and city of Manila.

That an inventory of a part of the property so captured is appended to this libel and is made a part hereof.

3. That all said captures resulted from a battle on the 1st day of May, 1898, at the place aforesaid, between the United States naval force above mentioned, and the following forces of the King of Spain:

Armed vessels:

Protected cruisers: "Isla de Cuba," "Isla de Luzon."

4 Unprotected cruisers: "Reina Christina," "Castilla," "Don Antonio de Ulloa," "Don Juan de Austria," "Velasco."

Gunboats: "General Lezo," "Marques del Duero."

Transport "Isla de Mindanao."

Survey vessel "Argos."

Mines and torpedoes presenting a dangerous and formidable resistance to United States vessels at the entrance to and in the harbor of Manila. Said mines and torpedoes were operated by the enemy and a number of them were exploded by the enemy during the engagement.

Land batteries protecting the harbor and city of Manila, which took an active part in the engagement and fired on the United States ships continuously.

That the guns on the vessels of the enemy and from the shore batteries actually engaged in the battle were able to throw within a fixed time a weight of metal greatly in excess of that which could be thrown by the guns on the United States vessels. That, in addition to the ship's batteries, the enemy's guns in the defensive works of Manila Bay, including only rifled guns of importance, numbered, to wit, 61 guns. That the average calibre of these guns exceeded 7 inches, and that 25 of them were breechloaders. That 4 of them taking part in the battle were of 9.5 inches calibre and fired heavier projectiles than any of the guns on the United States ships. That the efficiency of a gun ashore for destructive purposes is several times greater than that of a like gun

5 afloat. That the total number of men on the vessels of the United States at the time of said battle was 1,836. That the libellant can not now state exactly the number of men on board the enemy's vessels at the commencement of said engagement; that the number was in excess of the number on board the vessels of the United States; that the enemy's vessels engaged in said action, supported by torpedoes and mines and land batteries, as aforesaid, were of superior force to the vessels of the United States.

4. That all the property herein referred to as captured was taken for and appropriated to the use of the United States and now remains, such part thereof as has not been consumed, in the possession of the United States naval force on the Asiatic Station, and for that reason no part of it has been, or can be, sent in for adjudication to any court of the United States.

5. That of this, a part of the captured property was surveyed, appraised, and inventoried, under the authority of section 4624 of the Revised Statutes, by persons as competent and impartial as could be obtained, to wit, by a board consisting of officers of the United States Navy, as follows:

Captain Joseph B. Coghlan, U. S. Navy, senior member.
Commander Edward P. Wood, U. S. Navy, member.
Lieutenant Carlos G. Calkins, U. S. Navy, member.
Passed Assistant Paymaster S. L. Heap, U. S. N., recorder.

That a due report in duplicate of the said prize property so surveyed, appraised, and inventoried was made to the Secretary of the Navy, a copy of said survey, appraisement, and inventory being hereto attached and made a part hereof; that the total value of said captured property so appraised, as shown by said appraisement and inventory, is
6 three hundred and twenty-six thousand one hundred and forty-one dollars and eighty-nine cents ($326,141.89).

6. That said survey, appraisement, and inventory did not, however, include certain guns, ammunition, and supplies of various kinds captured from the arsenal at Cavite, and the shore batteries defending the harbor and city of Manila, and that the value of these guns, ammunition, and supplies is not at the present time known to libellant. Also that said survey, appraisement, and inventory did not include the two protected cruisers, "Isla de Cuba" and "Isla de Luzon," and the unprotected cruiser, "Don Juan de Austria," sunk during the engagement, but afterwards raised. That said board of appraisal made its report and the same was forwarded to the Navy Department at Washington, D. C., before the said Department decided to have these vessels raised, and no appraisal of said vessels has as yet been made. That said vessels have now been raised and appropriated to the use of the United States Government and are at Hongkong, China, undergoing repairs. That after steps were taken to raise these vessels, the Navy Department was requested by some of the captors, through their attorneys in Washington, to order their appraisal and the appraisal of the property captured ashore, but that such appraisal was not ordered. That the value of these vessels, after allowing the expenses of raising and repairing the same, libellant alleges on information and belief to be four hundred and twenty-five thousand ($425,000) dollars.

7. That there has not at this date been any district designated by the Secretary of the Navy for the institution of proceedings for the condemnation of any of said property as prize, or for the adjudication of the rights of this libellant and of the officers and men of his command,
7 or of any persons claiming to be entitled to such property. That more than three months have now elapsed since the capture of the said property.

8. That all and singular the premises aforesaid are true and within the jurisdiction of this honorable court holding a special term with the jurisdiction of a United States district court, and having jurisdiction in prize cases.

9. Wherefore this libellant prays that a monition in due form of law may be issued by this court, commanding all persons who may have an interest in the said property or in the proceeds thereof to appear herein and show cause, if any, why a judgment and decree of condemnation in prize should not issue whereby all the said property shall be condemned as prize to this libellant and the officers and men of the squadron under his command, in accordance with § 4630 of the Revised Statutes of the United States.

10. And this libellant further prays that a copy of this libel and complaint be served upon the attorney for the United States in and for the District of Columbia, and a further copy upon the honorable Secretary of the Navy, and that a rule be issued upon him to show cause, if any, why

the amount of three hundred and twenty-six thousand one hundred and forty-one dollars and eighty-nine cents ($326,141.89), and such further amount as the court may deem proper for the three cruisers raised and appropriated to the use of the United States and the property captured ashore, but not as yet surveyed, appraised, and inventoried, should not be deposited with the assistant treasurer of the United States nearest to the place of the session of this court, subject to the order of the court to be entered in this cause, and why a judgment and decree of condemnation in prize should not issue whereby all the said property shall
8 be condemned as prize to this libellant and the officers and men of the squadron under his command, in accordance with § 4630 of the Revised Statutes of the United States.

11. And the libellant prays for such other and further relief to him and to the officers and enlisted men of the squadron aforesaid in the premises as shall to law and justice appertain.

12. And your libellant prays that a day may be set on or before which all parties claiming an interest herein shall appear and answer to this libel and complaint.

Wherefore your libellant shall ever pray.

HERBERT & MICOU,
Proctors for Libellant.

CHARLES & WILLIAM B. KING,
Proctors for a Number of Officers and Men Interested.

DISTRICT OF COLUMBIA, *ss:*

Hilary A. Herbert, being duly sworn, deposes and says: That he is the proctor for the libellant in the above cause, and that the foregoing libel and complaint is true, to the best of his information and belief.

HILARY A. HERBERT.

Sworn and subscribed before me this 20th day of July, 1899.

[SEAL.] CHARLES R. HARBAN,
Notary Public.

Copy of survey, appraisement, and inventory referred to in paragraph 5 of the libel and attached to the original libel is omitted in printing.

9 ORDER FOR PROCESS.

[Filed Aug. 1, 1899.]

In the supreme court of the District of Columbia, in district court, this 1st day of August, 1899.

GEORGE DEWEY, ADMIRAL, &C., LIBELLANT,
v.
THE "DON JUAN DE AUSTRIA" AND OTHER prize property. } No. 559.

On reading and filing the libel in this case, the court orders that process issue as prayed, and appoints the 22d day of August, 1899, and the court room in the city hall, in the city of Washington, District of Columbia, as the time and place of hearing of the said libel; and also orders that notice of said time and place of hearing be given by publication thereof in the Law Reporter, published in the District of Columbia,

once a week for three successive weeks, and also by posting up the same at the court-house door.

CHAS. C. COLE,
Asso. Justice.

10 PROCESS.

[Filed Aug. 1, 1899.] 6693

In the supreme court of the District of Columbia, in district court.

This 1st day of August, 1899.

GEORGE DEWEY, ADMIRAL, UNITED STATES Navy, on behalf of himself and the officers and crew of the United States naval force on the Asiatic Station, taking part in the battle of Manila Bay, on May 1, 1898, and later captures at the same place,
v.
THE "DON JUAN DE AUSTRIA," "ISLA DE CUBA," "Isla de Luzon," "Leyte," "Mindanao," and other vessels and miscellaneous stores and supplies captured by the fleet under command of libellant.
} No. 559, District court.

The President of the United States to the marshal of the United States for said district, greeting:

Whereas a libel of information has been this day filed in the said court of George Dewey, Admiral United States Navy, in behalf of himself and the officers and crew of the United States naval force in the Asiatic Station, taking part in the battle of Manila Bay, on May 1, 1898, and in later captures at the same place against the property above specified, and more fully set forth in detail in said libel and the schedules forming a part thereof, and praying that a monition from the said court may issue commanding all persons interested to appear before said court and show cause, if any, why judgment and decree in condemnation of prize should not issue, and

11 Whereas the said libel further prays that a copy thereof be served upon the attorney for the United States in and for the District of Columbia, and a further copy upon the honorable Secretary of the Navy, and that a rule be issued upon said Secretary to show cause, if any, why the amount of three hundred and twenty-six thousand one hundred and forty-one dollars and eighty-nine cents ($326,141.89), and such further amount as the court may deem proper for the three cruisers raised and appropriated to the use of the United States and the property captured ashore, but not as yet surveyed, appraised, and inventoried, should not be deposited with the Assistant Treasurer of the United States nearest to the place of the session of this court, subject to the order of the court to be entered in this cause, and why a judgment and decree of condemnation in prize should not issue whereby all the said property shall be condemned as prize to this libellant and the officers and men of the squadron under his command, in accordance with §4630 of the Revised Statutes of the United States.

You are therefore commanded to give due notice to the attorney of the United States for the said district, and to the Secretary of the Navy of the United States serving a copy of the said libel upon each of the said persons and to all persons claiming the said property or knowing or having anything to say why it should not be decreed as aforesaid, and distribution made according to the prayer of the said libel that they be and appear before the said court, to be held at the City Hall, in the City of Washington, in and for said district, on the 22d day of August, 1899, at ten o'clock in the forenoon, or as soon thereafter as said cause may be heard, then and there to interpose a claim for the said
12 property or to show cause why condemnation should not proceed as prayed, and a decree be entered in accordance with said libel, and to make their allegations in their behalf. And what you shall have done in the premises do you then and there return, together with this writ.

CHAS. C. COLE,
Asso. Justice.

Marshal's return.

Served copy of within monition on Henry E. Davis, attorney of the United States for the District of Columbia; and on Charles H. Allen, Acting Secretary of the Navy, August 1, 1899.

AULICK PALMER, *Marshal.*
C.

13 GENERAL NOTICE.

[Filed August 1, 1899.]

In the supreme court of the District of Columbia, holding a district court of the United States.

GEORGE DEWEY, ADMIRAL, UNITED STATES Navy, on behalf of himself and the officers and crew of the United States naval force on the Asiatic Station, taking part in the battle of Manila Bay, on May 1, 1898, and later captures at the same place, v. THE "DON JUAN DE AUSTRIA," "ISLA DE CUBA," "Isla de Luzon," "Leyte," "Mindanao," and other vessels and miscellaneous stores and supplies captured by the fleet under command of libellant.	No. 559, District court.

On reading and filing the libel in this case, the court orders that process issue as prayed, and appoints the 22d day of August, 1899, and the court-room in the City Hall, in the city of Washington, District of Columbia, as the time and place to answer thereto; and also orders that notice of said time and place and of the substance of the libel be given by publication thereof in the Washington Law Reporter, a newspaper published in the District of Columbia; and also by posting the same at the court-house door, the said publication to be made once a week for three successive weeks.

To all whom it may concern:

Notice is hereby given that the libel in the above-entitled cause alleges in substance that on the first day of May, 1898, and thereafter the "Don de Austria," "Isla de Cuba," and "Isla de Luzon" and other smaller vessels and property more specifically described therein were captured by the United States naval force in the Asiatic Station in Manila
14 Bay, the said property belonging at the time, as it is believed, to the King of Spain; that all of the said property was lawful prize of war, but was not sent in for adjudication before any prize court for reasons set forth in the libel, and said libel prays that said vessels and other property may be adjudged lawful prize of war and a decree pronounced ordering and directing the value thereof to be distributed among the officers and crews of said United States naval force in the Asiatic Station taking a part in the capture thereof.

And all persons interested in said property, or claiming the same, or knowing, or having anything to say why the adjudication, decree, and distribution aforesaid should not be made, are warned to be and appear before the court at the time and place aforesaid, then and there to interpose a claim to said property, and make their allegations in that behalf.

CHAS. C. COLE,
Asso. Justice.

(Indorsed:) Posted a copy of within notice in a conspicuous place in the court-house, D. C., Aug. 3, 1899. Aulick Palmer, marshal.

15 [Filed Jan. 8, 1900.]

In the Supreme Court of the District of Columbia.

GEORGE DEWEY, ADMIRAL, UNITED STATES Navy, on behalf of himself and the officers and crew of the United States naval force on the Asiatic Station, taking part in the battle of Manila Bay on May 1, 1898, and later captures at the same place,

v.

THE "DON JUAN DE AUSTRIA," "ISLA DE Cuba," "Isla de Luzon," "Leyte," "Mindanao," and other vessels and miscellaneous stores and supplies captured by the fleet under command of libellant.

No. 559, district court.

IN PRIZE.

The answer of the United States.

To the honorable the justices of the Supreme Court of the District of Columbia, holding a special term with the jurisdiction of a United States district court:

The Attorney-General, in behalf of the United States, now the lawful owner of all the property sought to be condemned as prize in the
16 present cause, reserving all objections and exceptions whatsoever, answers the libel filed in this cause as follows:

1. The averments of the first section of the libel as to the official position of the libellant on the 1st day of May, 1898, and as to the vessels composing the squadron under his command on that date are admitted to be true.

2. It is true that war existed between the United States and the Kingdom of Spain on the 1st day of May, 1898, but the Attorney-General denies that the squadron under libellant's command did on that day capture from the King of Spain the two protected cruisers "Isla de Cuba" and "Isla de Luzon" and the unprotected cruiser "Don Juan de Austria," and he avers that the said cruisers were sunk during the engagement, as admitted in the sixth section of the libel. The Attorney-General has no certain knowledge as to the circumstances under which the steamboats (referred to in the libel as gunboats) "Leyte" and "Mindanao" were taken from the King of Spain, and prays that due proof thereof may be made. He has no certain knowledge as to which, if any, of the other vessels and property belonging to the King of Spain, referred to in the second section of the libel, were captured by the said squadron in such places and under such circumstances as would authorize their condemnation as prize to the libellant and the squadron under his command, and he prays that due proof of all the facts and circumstances of the said alleged captures may be made. He admits that guns, ammunition, ships' supplies, and supplies of various kinds were captured by the libellant and the forces under his command in the naval arsenal
17 at Cavite and the shore batteries defending the harbor and city of Manila, but he denies that such captures authorize the condemnation of the property captured as prize to the libellant and the squadron under his command.

The Attorney-General denies that the inventory appended to the libel is an original document or a duly certified copy of an original document.

3. It is true that a battle took place on the 1st day of May, 1898, at the place and between the forces stated in the third section of the libel, but the Attorney-General denies that the enemy's vessels engaged in said action, supported by any torpedoes, mines, and land batteries, to which, or to the fire of which, the libellant's squadron was exposed during the said action were of superior force to the vessels of the said squadron.

4. The Attorney-General admits that whatever property was captured from the enemy by the libellant's squadron as the result of the battle aforesaid, and also whatever vessels or other property of the enemy were sunk during the said battle, and afterwards raised and recovered by the United States, and at its own cost, were appropriated to the use of the United States, and now remain, such part thereof as has not been consumed, in the possession of the United States, and that for that reason it is impracticable that any portion of the same should be sent in for adjudication to this court.

5. The Attorney-General admits that a survey, appraisement, and inventory of certain property appraised at $326,141.89, which had been taken from the enemy, as the result of the battle aforesaid, or which was afterwards recovered from vessels of the enemy which had been sunk
18 or destroyed in the said battle, was made as stated in the fifth section of the libel, and that the said survey, appraisement, and inventory, or a duly certified copy thereof, can be furnished in response to an order of the court, but he denies that any duly certified copy

thereof has been attached to the libel, and he has no certain knowledge as to what portion, if any, of the said appraised property was captured by the libellant and the squadron under his command, in such places and under such circumstances as would authorize its condemnation as prize to the libellant and his said squadron, and the Attorney-General prays that due proof of all the facts and circumstances of the alleged capture may be made.

6. The Attorney-General has no certain knowledge of the value of any property taken from the naval arsenal at Cavite, and the shore batteries defending the harbor and city of Manila, except in so far as any of the said property may be included in the property surveyed, inventoried, and appraised as hereinabove stated, and he denies that any of the property taken from the said naval arsenal, or from the said shore batteries, or the cruisers "Isla de Cuba," "Isla de Luzon," and "Don Juan de Austria," sunk during the battle aforesaid, but afterwards raised by the United States, and at its own cost, are subject to condemnation as prize to the libellant and his squadron.

7. The averments of the seventh section of the libel are true.

8. The Attorney-General denies the truth of the averments of the first seven sections of the libel, except in so far as he has hereinabove admitted the truth of some of the said averments; but he admits that the issues raised by the libel and this answer are within the juris-
19 diction of this honorable court holding a special term with the jurisdiction of a United States district court, and having jurisdiction in prize cases.

And the Attorney-General insists upon all the above-stated matters of defense in law as if the United States had availed itself thereof by demurrer.

9. Wherefore the Attorney-General prays that the above-entitled cause be referred to a commissioner, and that the libellant, and his officers and crew, in whose behalf the libel is filed, and also the United States, in whose behalf this answer is filed, may have leave to take testimony before said commissioner relative to the allegations to the said libel and in this answer.

10. And the said Attorney-General prays for such other and further relief in the premises as shall to law and justice pertain.

JOHN W. GRIGGS,
Attorney-General.

20 JOINDER OF ISSUE.

[Filed January 16, 1900.]

In the supreme court of the District of Columbia.

GEORGE DEWEY, ADMIRAL UNITED STATES Navy, &c., *vs.* THE "DON JUAN DE AUSTRIA," &c. } No. 559, district court.

The libellant hereby joins issue upon the answer of the United States filed herein.

HERBERT & MICOU,
CHARLES & WM. B. KING,
Proctors for Libellant.

21 STIPULATION AS TO EVIDENCE.

[Filed Feb. 1, 1900.]

In the supreme court of the District of Columbia.

GEORGE DEWEY, ADMIRAL UNITED STATES Navy, &c.,
vs.
THE "DON JUAN DE AUSTRIA," &C. } District court, No. 559.

It is hereby stipulated and agreed between the libellant and the United States that the counsel for either party shall be entitled to use as evidence in this cause, subject to objection on account of irrelevancy, incompetency, and immateriality, any portion of the following papers:

1. The Appendix to the report of the Bureau of Navigation of the Navy Department for the year 1898, published as an official document of the United States.

2. The printed evidence both for claimant and defendant in the Court of Claims filed in cause entitled "Engagement at Manila Bay, Naval Bounty, No. 1."

HERBERT & MICOU,
CHARLES & WM. B. KING,
Proctors for Libellant and Others, Captors.
CHARLES C. BINNEY,
Special Attorney for United States.

22 ANSWER OF SECRETARY OF NAVY.

[Filed Apr. 25, 1900.]

In the supreme court of the District of Columbia.

GEORGE DEWEY, ADMIRAL UNITED STATES Navy, on behalf of himself and the officers and crew of the United States naval force on the Asiatic Station, taking part in the battle of Manila Bay, on May 1, 1898, and later captures at the same place,
v.
THE "DON JUAN DE AUSTRIA," "ISLA DE Cuba," "Isla de Luzon," "Leyte," "Mindanao," and other vessels and miscellaneous stores and supplies captured by the fleet under command of libellant. } No. 559, district court.

The answer of the Secretary of the Navy.

To the honorable the justices of the supreme court of the District of Columbia, holding a special term with the jurisdiction of a United States district court:

The Secretary of the Navy, in compliance with the rule of this court, which has been duly served upon him, requiring him to show cause, if

any he have, why the prayer of the libel in this case should not be granted, respectfully calls the attention of the court to the answer which has been made by the Attorney-General, in behalf of the United States, to the said libel (which answer was filed on the 8th day of January last), and declares his full concurrence in the said answer, and requests that the same may be taken as his answer to the libel filed in this cause and to the rule of this honorable court.

JOHN D. LONG,
Secretary of the Navy.
L. C. T.

23 [Filed Dec. 19, 1900.]

In the supreme court of the District of Columbia.

GEORGE DEWEY, ADMIRAL UNITED STATES Navy, on behalf of himself and the officers and crew of the United States naval force on the Asiatic Station taking part in the battle of Manila Bay on May 1, 1898, and later captures at the same place, vs. THE "DON JUAN DE AUSTRIA," "ISLA DE CUBA," "Isla de Luzon," "Leyte," "Mindanao," and other vessels and miscellaneous stores and supplies captured by the fleet under command of libellant.	No. 559, district court.

IN PRIZE.

Amendment to the answer of the United States.

The Attorney-General, by leave of court first had and obtained, amends the answer of the United States, filed in the above-entitled cause on the 8th day of January, 1900, by adding thereto, between the eighth and ninth sections of said answer, the following:

And further answering, the Attorney-General submits to the court:

24 As far as concerns the averment in the second and fourth sections of the libel that the squadron under libellant's command captured guns, ammunition, ship supplies, and supplies of various kinds from the naval arsenal at Cavite, and the shore batteries defending the harbor and city of Manila, and that said property was taken for, and appropriated to the use of, the United States, so much of the said property as remained in the possession of the United States unconsumed and not put into use by the United States in its naval or military service at the date of the exchange of the ratifications of the treaty between the United States and the Kingdom of Spain, to wit, the 11th day of April, 1899, was not subject to the jurisdiction of the court, or to condemnation as prize to the libellant and the squadron under his command, for the further reason that all of the said property so remaining unconsumed and unused on the said date was the property of the Kingdom of Spain in accordance with the third paragraph of the fifth article of the said treaty, reading as follows:

"The time within which the evacuation of the Philippines Islands and Guam shall be completed shall be fixed by the two Governments. Stands of colors, uncaptured war vessels, small arms, guns of all calibres, with their carriages and accessories, powder, ammunition, live stock, and materials and supplies of all kinds belonging to the land and naval forces of Spain in the Philippines and Guam, remain the property of Spain. Pieces of heavy ordnance, exclusive of field artillery, in the fortifications and coast defences, shall remain in their emplacements for the term of six months, to be reckoned from the exchange of ratifications of the treaty; and the United States may, in the meantime, purchase such material from Spain, if a satisfactory agreement between the two Governments on the subject shall be reached."

JOHN W. GRIGGS,
Attorney-General.

25 INTERVENING LIBEL OF EDWIN F. STOVELL.

[Filed Mar. 26, 1901.]

Supreme court of the District of Columbia.

GEORGE DEWEY, ADMIRAL UNITED STATES Navy, on behalf of himself and the officers and crew of the United States naval force on the Asiatic Station taking part in the battle of Manila Bay, on May 1st, 1898, and later captures at the same place,
vs.
THE "DON JUAN DE AUSTRIA," "ISLA DE Cuba," "Isla de Luzon," "Leyte," "Mindanao," and other vessels and miscellaneous stores and supplies captured by the fleet under command of libellant.
} No. 559, district court.

Libel in prize.

Intervening libel of Edwin F. Stovell, captain, in aid and support of the libel of George Dewey, Admiral in the United States Navy, in which cause Captain Edwin F. Stovell prays to be admitted as a party.

To the honorable the justices of the supreme court of the District of Columbia holding a special term with jurisdiction of a United States district court.

The libel of Edwin F. Stovell, late captain of the armed United States naval vessel "Nanshan," presents as ancilliary to the libel
26 of George Dewey, Admiral in the United States Navy, number 559 upon the docket of this court, in behalf of the officers and crew of the said ship "Nanshan," as well as in his own behalf.

I. That this libellant at the time of the capture hereinafter mentioned was a captain of the United States armed naval ship "Nanshan," which, to wit, prior to, on and after the first day of May, 1898, was a part of the squadron in and around Manila Bay, Philippine Islands, under the command of Commodore George Dewey, which squadron was known as the United States naval force of the Asiatic Station.

II. That some time in the month of April, 1898, George Dewey, commodore in the United States Navy, and acting on behalf of the United States, bought the ship "Nanshan" for the Government of the United States, converted her into an armed naval vessel of the United States, detailed and kept on board a naval officer and four enlisted men, and made her a part of the United States naval squadron or fleet under his command.

III. That in the month of April, 1898, before said squadron sailed from Hong Kong, China, for the Bay of Manila, Philippine Islands, this libellant, his officers and crew, who were in command or in the charge of the ship "Nanshan" before she was purchased by the Government of the United States, contracted and agreed with Commodore George Dewey, acting on behalf of the United States, to enter the naval service of the United States, and to be subject to, abide by, and obey all laws, rules, and regulations of the United States or of the United States Navy Department relating to the armed naval forces of the United
27 States, and to obey all orders or commands given or issued by their superior officers in the United States Navy.

IV. That the ship "Nanshan" formed part of the effective naval force of the United States during the battle of Manila Bay, on May 1, 1898; was during said entire battle within the zone of fire from the Spanish ships, forts, and land batteries; was within signal distance of all the naval vessels of the attacking fleet or squadron of the United States, under the command of Commodore George Dewey, and was so situated, manned, and armed as to render effective aid, if required, to any or all of the vessels composing the said fleet or squadron of the United States.

V. That this libellant on May 1, 1898, and for a long time before and after that date, and at the time of the capture of the Spanish vessels and batteries and property in and around Manila, specifically mentioned in said libel number 559, by the naval vessels of the United States therein mentioned, was captain of the ship "Nanshan," participating in such captures stated in said libel number 559, the several recitals or allegations of which libel this libellant adopts as fully as if the same were repeated and set forth herein at length and prays the action and the relief of this court as therein prayed. Wherefore your libellant shall ever pray.

CHAS. W. CLAGETT,
Proctor for Libellant.

DISTRICT OF COLUMBIA, *to wit:*

Charles W. Clagett, being duly sworn, deposes and says:
28 That he is proctor for the libellant in the above cause, and that the foregoing libel and complaint is true to the best of his knowledge and belief.

CHAS. W. CLAGETT.

Subscribed and sworn to before me this 26 day of March, 1901.

J. R. YOUNG, *Clk.*,
By R. J. MEIGS, JR., *Asst. Clk.*

(Endorsed:) Leave to intervene granted. A. C. Bradley, J.

29 MOTION FOR LEAVE TO AMEND LIBEL.

[Filed Apr. 25, 1901.]

In the supreme court of the District of Columbia.

GEORGE DEWEY, ADMIRAL, U. S. N.,
v.
THE "DON JUAN DE AUSTRIA" AND other property. } No. 559. District court, in prize.

Motion for leave to amend libel.

The libellant respectfully prays leave of this honorable court to amend paragraph 2 of his libel by adding to the same, at the end of the same, the following:

"That beside the foregoing property belonging to the King of Spain there were captured by the libellant and the squadron under his command in the waters of and around Manila Bay, at and about the time aforesaid, a large number of cascos or cargo boats, to wit, twelve, and two wrecking boats, the private property of subjects of the King of Spain, then and there being public enemies of the United States."

HERBERT & MICOU,
Proctors for Libellant.

CHAS. & WM. B. KING,
Proctors for other Officers and Men.

I have no objection to the allowance of this motion.

CHARLES C. BINNEY,
Special Attorney.

30 [Filed Apr. 24, 1901.]

In the supreme court of the District of Columbia.

GEORGE DEWEY, ADMIRAL, U. S. N.,
vs.
THE "DON JUAN DE AUSTRIA" AND other property. } No. 559. District court, in prize.

Motion for leave to amend the answer of the United States.

The counsel for the United States respectfully asks leave of this honorable court to amend section 2 of the answer of the United States, filed on January 8, 1900, in the above-entitled cause, and amended by leave of court on December 19, 1900, by adding to the same, at the end of the said section, the following:

The Attorney-General admits that certain cascos or cargo boats and wrecking boats, the private property of native Philippinos or other persons resident in the Philippine Islands, were taken possession of by the libellant and the naval force under his command on or after the first day of May, 1898, but he denies that such boats were captured as prize or are subject to condemnation by this court as prize property.

The object of this motion is to make the answer responsive to the libel as amended by leave of court on April 23, 1900.

CHARLES C. BINNEY,
Special Attorney.

(Endorsed:) Granted. A. C. Bradley, justice.

April 24, '01.

No objection to filing this amendment.

HERBERT & MICOU,
Proctor' for Libelant.

In the Supreme Court of the District of Columbia.

GEORGE DEWEY, ADMIRAL UNITED STATES Navy, etc.,
v.
THE DON JUAN DE AUSTRIA AND OTHER property.

No. 559, District court.
In prize.

DEPOSITIONS AND OTHER EVIDENCE PRINTED UNDER STIPULATION OF THE PARTIES FILED DECEMBER 15, 1900.

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Deposition of Reynold T. Hall, on behalf of libellant, taken at Brooklyn, N. Y., May 25, 1900.

Appearances: William B. King, esq., and Benjamin Micou, esq., for the libellant; Charles C. Binney, esq., for the United States.

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on the 25th and 26th days of May, in the year of our Lord one thousand nine hundred, I, Ethel Powers, a notary public, duly appointed for the county of New York, did call and cause to be and personally appear before me, at the navy-yard in the borough of Brooklyn, city of New York, in the State aforesaid, Reynold Thomas Hall, to testify and the truth to say on the part and behalf of the libelant in a certain suit or matter of controversy now pending and undetermined in the supreme court for the District of Columbia, at Washington, D. C., wherein George Dewey, as Admiral of the United States Navy, on behalf of himself and others, etc., is libelant against the ships *Don Juan de Austria*, and others

And the said Reynold Thomas Hall, being about the age of 41 years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows, viz:

REYNOLD THOMAS HALL, being duly sworn and examined as a witness for the libelant, testifies:

By Mr. KING:

1. Question. What is your name, age, and occupation?

Answer. Reynold Thomas Hall; 41 years old; lieutenant-commander, United States Navy; at present a resident of the borough of Brooklyn, New York.

2. Question. How long have you been in the Navy, and what branch of the service have you been in?

Answer. Since April 22, 1880; I have been in the engineer corps.

3. Question. What is your present assignment of duty?

Answer. My present duty is in connection with the steam engineering department of the New York Navy-Yard.

4. Question. Were you in Admiral Dewey's fleet in the battle of Manila, May 1, 1898?

Answer. I was.

5. Question. What position did you hold then?

Answer. I was at that time chief engineer in the United States Navy, and chief engineer of the gunboat *Petrel*.

6. Question. After the battle did you have any change of assignment in your duty; and if so, what was it?

Answer. After the battle the *Petrel* was assigned as the guard ship of Cavite Arsenal, which was captured at the time the fleet was destroyed. About May the 15th, I was detailed as chief engineer of the Cavite naval station, in addition to my duties as chief engineer of the *Petrel*.

7. Question. Please state the circumstances under which you were assigned to duty as chief engineer of the Cavite naval station?

Answer. As I remarked before, the Spanish naval arsenal at Cavite had fallen into our hands directly after the destruction of the Spanish fleet. The *Petrel*, being made the guard ship, was stationed near by, and the commanding officer of that ship was made the commandant of the arsenal, and under his orders I assumed the duties of chief engineer of the arsenal.

8. Question. Who was the commanding officer?

Answer. Commander E. P. Wood was the commander of the *Petrel*, and he assigned me to duty as chief engineer of the Cavite arsenal.

9. Question. Commander Wood is now dead, is he not?

Answer. Yes, sir.

10. Question. Did your assignment to duty in that yard bring you into any relation or control of stores in that yard at the time?

Answer. My assignment to duty at the Cavite naval station placed under my supervision all the storehouses and all the material throughout that reservation. I had the keys of the storehouses we were able to lock up, and sentries were placed over those storehouses we were not able to fasten. The sentries were instructed to allow nothing to be taken from these buildings without my authority. This was in connection with my

duty as the engineer of the navy-yard where we made repairs that were required by the fleet, the transports, and the Quartermaster's Department of the Army.

11. Question. Were there Spanish stores found in the arsenal when you took possession?

Answer. The storehouses were, in my opinion, particularly well stocked.

12. Question. After you took charge how were stores withdrawn from the yard for the needs of the United States Navy?

Answer. After I took charge the stores were taken only on my authority or by notice being given me that authority had been granted by Commander Wood, the commandant of the yard.

13. Question. Previous to your going on duty, do you know whether stores had been taken from the yard?

Answer. Before I took charge as engineer of the yard, it had been the custom for all the ships of the fleet to replenish their stores from what could be found in the arsenal to suit. Many of our stores, particularly inflammable material, were thrown overboard on the passage from Miers Bay to Manila. By inflammable material I mean lumber, paints, oils, varnish, chemicals, and material of that order. Boats, awnings, boat equipment were to my knowledge taken from the yard, and some coal.

14. Question. What was done with the property that was taken from the yard as you have described, before you had taken control?

Answer. This property was taken on board the various ships; for instance, on the *Petrel* a set of awnings was taken and fitted to our ship; a steam-steering gear was taken at my suggestion, and I installed it on board that ship. All these items I have mentioned were reported by me to Commander Wood at the time the orders were given to make a return of all material taken from the Cavite arsenal. This information was for the benefit of the board of appraisal, about the first part of June.

15. Question. In referring to the board of appraisal, what board do you mean?

Answer. There was a board ordered by the Admiral in the first part of June, 1898, which appraised the value of the materials taken by people of the fleet from the naval arsenal. This board was composed of Captain Coghlan of the *Raleigh*, Captain Wood of the *Petrel*, Lieutenant Calkins of the *Olympia*, and Paymaster Heap, I think, of the *Raleigh*. Captain Wood consulted me in reference to the amount of coal I estimated there was on hand when we took possession, when we occupied the naval station, and the amount of coal that was on the *Manila* when we brought her out from her anchorage. Also my idea of the value of the transport *Manila*.

16. Question. Do you know how the returns of the property appraised by this board were made up for the use of the board?

Answer. Only so far as I individually was concerned. As chief engineer of the *Petrel*, in obedience to an order, I furnished the commanding officer with a list of the articles I had taken from the naval station at Cavite and put on board ship, and what I thought the articles were worth.

17. Question. Have you any personal knowledge as to any similar return being required of other officers?

Answer. Yes. The heads of the departments of the various ships I

have heard, and of the *Petrel* I know, were required to make a statement of the articles they had taken from the Cavite arsenal and put on board ship; that is, the paymaster in the department of provisions and clothing, the navigator in the department of ordnance and navigation, the executive officer in the department of construction and equipment, and the chief engineer in the department of steam engineering.

18. Question. Have you examined the report of the Coghlan board?

Answer. Yes, sir.

19. Question. Please state whether the appraisement made by that board, which is already in evidence in this case, contains articles taken from the arsenal or navy-yard at Cavite after you took charge of the stores there.

Answer. No, sir; it does not, to the best of my knowledge and belief. Before I took possession everything accounted for by the heads of the various departments of the different ships had been taken from the arsenal and were on board the ships.

20. Question. Was any appraisement made of the property remaining in the arsenal after you took charge of it?

Answer. No, sir; not to my knowledge. During the time I was in charge there, there was no time nor opportunity for any appraisal or even lists of the stores being made out.

21. Question. Why was there no such opportunity?

Answer. On account of the unsettled condition of the surrounding country, the preparations being forced to keep our fleet in order, and the preparations being made to take care of the military expeditions that from time to time arrived.

22. Question. How long did you remain in charge of this arsenal?

Answer. From the middle of May till the 15th of September, 1898.

23. Question. Please examine the extended list annexed to the report of the Coghlan board, which I hand you, and set forth, so far as you are able, which of these classes or items in the several classes were captured afloat or were taken from the property ashore. In making this answer please state how you know the facts in regard to each item as to which you testify.

(As the typewritten copy handed to the witness is an uncertified one, Mr. Binney reserves any objection to it so far as concerns possible errors in copying.)

Answer. Class No. 1, anchors and ground tackle, were, I believe, taken from on shore, from a building near the derrick on the wharf.

24. Question. Please state on what you base that statement.

Answer. Because in that locality was stored all the gear of that description. The anchors, as described here, from their estimates, were boat anchors; in fact all the gear was for the pull-away boats, and was taken to replace the gear lost in our boats that were disabled by the concussion of our guns. In some instances our boats were so shattered that they had to be cut away from the davits during the battle, and were lost overboard. This gear I believe was used to replace the gear in those boats, and was put in boats that were appropriated, and which are named in some other class in this list.

Class No. 2. My recollection is that one or two search lights and an Ardois signaling system were taken from some of the sunken vessels;

but the rest, and particularly the spare parts of electrical gear, were taken from building No. 26 on the "Town and Naval Station of Cavite Map of the Bureau of Yards and Docks, Navy Department, Washington, October, 1899."

(The map referred to by the witness is put in evidence and marked "R. T. H. Exhibit No. 1.")

Answer. (Continued.) Class No. 3. Most of the articles in this class I believe were obtained from building marked No. 23 on said map. Some few items may have been obtained from the vessels we sank, but I am quite sure that in general these articles on board those ships were burned up with the vessel.

Class No. 4 were all from the shore, from the first floor of building No. 1.

Class No. 5 I believe was from building No. 2 on shore.

Class No. 6 I can't locate.

Class No. 7 I believe were taken from building marked No. 15, and from position No. 16 in the arsenal grounds; all from on shore.

In using these numbers for the buildings, etc., I am referring to my own figures in red ink upon this map.

Class No. 8 I think was entirely from on shore, and came from buildings No. 23, 1 and 2, where material of that class was stored.

Class No. 10 was I believe taken from the second floor of building No. 5; that being the sail loft where bunting and material of the class was stowed.

Class No. 11, 1 barrel of charcoal, was taken from the shore from building 15. The 1,700 and odd tons of coal is, I believe, the total of about 550 tons which were found in the bunkers and in the hold of the *Manila* when we took her out from her anchorage; and the balance was on shore in two places, two piles, in the naval arsenal.

Class No. 14, hardware, I believe all came from buildings Nos. 2, 21, and 8.

Class No. 16. Part of this I believe came from on board ship; a part of it from what was known as the Palace building, marked on the blue print proper No. 9, and part from building No. 1, second floor.

Class No. 17 I believe came from the second floor of building 2 and a part of it I think from the second floor of building No. 1.

Class No. 18 I don't knew about.

Class No. 19. This lumber was found in buildings 21 and 19 and in position 17.

Class No. 20 I believe all came from the machine shop on the first floor of buildings 4 and 5.

Class No. 21 is all from on shore in the arsenal, scattered in different buildings.

Class No. 22 I don't know anything about. All this material that is mentioned here, excepting heavy articles such as heavy shell and four-inch gun, came from the second floor of building No. 4; much of it came from on shore, but I don't know how much.

25. Question. Can you state definitely whether this particular stuff which was included in class 22 came from shore or from the vessels?

Answer. No.

26. Question. Can you state as to any of the particular articles in class 22, whether they came from shore or from the vessels?

Answer. I believe spare parts of guns, the shell and the powder, bayonets and belts, cartridge boxes and belts, breechblocks for six-pounders, field carriages, firing pins, passing boxes for powder, Mauser rifles, Remington rifles, side bars, bristle sponges, tanks for powder, tompions, all came from on shore, for the condition of the vessels sunk was such that they would have been unable to obtain from the vessels at that time these articles, and, had they been able, the articles would have been ruined.

27. Question. State what you know about the articles under the head of gun and mount.

Answer. There were several guns taken from the vessels, and some of them were put upon the *Manila*. Her battery was increased from 4 guns, when we took her, to 12 guns, when I left the fleet, in June, 1899. There was one gun dismounted in building No. 2, first floor, of about 4-inch caliber.

28. Question. Were there other guns and mounts contained in that list ashore?

Answer. I don't know.

29. Question. Had the vessels any such guns and mounts on board?

Answer. The vessels had guns and mounts corresponding in size to those mentioned in this list, but most of them were badly damaged when the ships were on fire.

I understand that the question is, Where did this stuff come from? These people took them off on the ships, and we took a lot of it off. It was taken from the storehouses. Going down this list, I recognize some of these things, because they didn't take all there was. I saw what remained when I took charge of the stores on shore.

Class 23 was all on shore. Naturally any portion of it, had it been on board a ship, would have been under water.

Class No. 24 was all on shore in the second floor of building marked No. 1. It came from there.

Class No. 25 is general stock and material in storehouses on shore, principally in buildings on the first floor, in 2, 3, 4, and 5.

Class No. 27 was all taken from shore.

Class No. 28, ship's bell, I think that was from one of the ships.

One cutter was on the beach and the other was afloat.

If the boat is hauled up high and dry, propped up on the beach, I have been saying she is on shore. If she is hauled into the wharf and floats, I have been calling that as a boat afloat. I think, possibly, there may be some distinction about the meaning. All these boats were either on the beach or fast to the wharf; that is, they were not adrift and out, like ships were; and it strikes me that, properly speaking, I should say that the boats fast to the wharf were ashore when right alongside of the wharf.

One of these cutters was on the ways, and the larger one was in the water alongside the wharf.

Gigs, whaleboats, and wherry were taken from the arsenal off to the different ships. The *Petrel* got a gig and a whaleboat to take the place of those that were destroyed by the concussion of our gun. Other ships took the other boats.

30. Question. What was the condition of these different boats as to their readiness for use?

Answer. They were all ready; some few items of equipment, some of them needed to be supplied with awnings, fenders, boat chains, and a boat anchor, or something of that kind, some of the equipment, but they all were there ready.

31. Question. What were the conditions under which these boats were lying on the beach or elsewhere?

Answer. People went ashore and landed, and got out and left the boats behind. We came along and took them. They were boats belonging to these various ships of the Spanish.

The water boat was afloat. That is a part of the equipment of the arsenal, used to carry water from the shore to the various ships in the harbor.

The three launches first mentioned and the three launches second mentioned were taken possession of by our forces on May 1. That night they were towed off from the Cavite Arsenal, and were used as tenders to the different ships of the fleet.

The 30-foot clinker-built boat with compound engines I am not positive about, but I think was propped up on the beach and not in use.

32. Question. What was she there for?

Answer. In store; in ordinary, as it is called.

33. Question. Was that boat ready for use?

Answer. I don't know that it was.

34. Question. Where were the three launches first mentioned and the second set of three—in the water or on shore?

Answer. They were in the water. We towed them off to the fleet the evening of May 1, along with the *Rapido*, a tugboat.

The *Barcelo* was captured after the 1st of May; I don't remember the circumstances.

The *Cavite* was captured after the 1st of May.

The *Callao* was captured after the 1st of May.

The *Consuelo* was captured after the 1st of May.

The *Hercules* was put in repair and run by the *Petrel* while at Cavite Arsenal. These boats were all found afloat in the bay, cruising around between Miravalles and Sangley Point.

The *Concordia* I don't remember.

The *Iloilo* was captured by one of the ships of the fleet; I think the *Baltimore*.

The *Isabella I* was captured by us; was used as a transport carrying the Spanish sick and wounded from Cavite to Manila.

The *Manila*, a transport, was captured by us the 2d, 3d, or 4th of May. Officers from the *Petrel*, myself one of them, went on board and brought her off during the night.

34½. Question. Those large boats were all afloat?

Answer. All afloat. There were very few vessels that were not afloat.

The *Leyte* was captured by the flagship or surrendered to the flagship.

The *Mindanao* was afloat, moored well up in the bay, and I with a party of others went on board, when they threw overboard 30 tons of powder. She was new, but incomplete, and had been used as a powder boat.

35. Question. Was that a different boat from the one known as the *Isla de Mindanao?*

Answer. Entirely different boat. The *Isla de Mindanao* was a trans-Atlantic steamer; the *Mindanao* was a little gunboat, incomplete.

The *Rapido* was a large seagoing tug; was put in order by us, and used for towing and passengers between Cavite and Manila.

The flags probably came from the ships that were sunk. The boat gear, generally speaking, in this class came from building No. 23 or the second floor of No. 1.

Class No. 29 I don't remember about; it came from on shore, I think, about the yard. I think it came from the building that is known as the Palace.

Class No. 30 was on shore in buildings 7 and 15.

Class No. 31 was on shore, scattered about the yard.

Class No. 32. I don't know where it was; it was somewhere on shore.

This paper I know was made up from statements given by the various officers of the stuff they had taken from on shore. There isn't any question in my mind about this list of stores here, and coupled with that is the board's appraisal of the various boats and floating material they found.

36. Question. Please explain whether you mean by the last statement that all of these articles named in the appraisement were taken from on shore except the boats.

Answer. I mean that all the articles mentioned in this board of appraisal, with the exception of searchlights and an Ardois signaling system, and the vessels, tugs, and launches, which were afloat, are made up from lists submitted to the commanding officers of the different ships by officers who had taken them from the arsenal on shore.

37. Question. When you make that statement do you mean to change your detailed statement already made?

Answer. No; I mean to say that in speaking in general terms of this whole thing, merely speaking of this from reading it over, as I have, I see their lists, I recognize some items there that I sent in, that I sent to my commanding officer, the same as other officers.

38. Question. I want to ask you whether you mean by this general statement to modify your statement already given in detail as to particular articles.

Answer. No, sir, not in detail; I do not.

39. Question. Was any inventory made of the property on shore so far as you personally know not included in this appraisement of the Coghlan board?

Answer. No; not that I know of.

40. Question. How closely did your duties bring you in contact with the stores on shore?

Answer. I frequently visited the storehouses during the day in connection with obtaining material to carry on the work of repairs, and my visits consisted in inspecting and locating the various materials we found. In that way I became familiar after four months' practice with the locality and the general amounts of the stores on hand.

41. Question. How frequently were applications made to you for stores from the stock on hand?

Answer. Daily, hourly, half hourly, and in fact incessantly.

42. Question. How were you enabled to know whether you had on hand the articles for which inquiry was made?

Answer. Only by ascertaining myself from hunting for the stores and remembering how many of the articles were in our possession.

43. Question. Can you state in general, referring to the map, where the articles on shore were located?

Answer. Yes; I can. In a general way they were located in the buildings on this map indicated by the red-ink figures.

44. Question. Have you given any consideration to the amount of property in detail which was in those buildings on shore exclusive of that appearing in the Coghlan appraisement?

Answer. Yes, sir.

45. Question. Have you made out any statement or estimate of what was in those buildings?

Answer. I have.

46. Question. Will you please produce it?

Answer. I produce it.

47. Question. Please state how you made out this estimate.

Answer. From four months' daily visiting the localities of these stores I became quite familiar with the approximate quantities of the various articles and their location about the arsenal. My estimates of the value of these articles are based upon my general information on the subject, and the reduction of value for articles of Spanish make.

48. Question. What method did you pursue in making out this paper?

Answer. I first procured the map, and with the map I traversed each building on the various floors, and from memory made up a list of approximate quantities of the various articles that I called to mind were there, and that I daily observed while on duty at the arsenal; articles that we were constantly using from in our work of repairs for the various vessels and in the Quartermaster's Department of the Army.

49. Question. Will you please state to what degree you consider this a correct statement of the stores upon hand in the arsenal when you took possession?

Answer. It is my belief that the enumerateed articles are correct.

50. Question. Did you or did you not include in this enumeration the articles entering into the Coghlan appraisement?

Answer. I did not. The Coghlan appraisement was for material taken on board the ships before the board was convened.

(This list made by the witness and produced by him is introduced in evidence and marked "R. T. H., Exhibit 2.")

51. Question. In the requirements of the service as an engineer officer, do you have any occasion to learn the values of naval stores of various classes?

Answer. I have daily occasion. All material required by the Department has to be made with an estimate attached. This estimate is based upon what we can learn from the manufacturers of the articles required, and from frequent inquiry and memorandums that are constantly kept we are generally familiar with the value of materials.

52. Question. In fixing the values in this estimate, are they made in standard money of the United States?

Answer. Yes, sir.

53. Question. When you left the arsenal, to whom did you transfer control of the stores?

Answer. Passed Assistant Engineer (now lieutenant) H. W. Jones.

54. Question. Had you occasion to observe, after the battle of Manila Bay, the condition of the vessels *Don Juan de Austria*, *Isla de Luzon*, and *Isla de Cuba?*

Answer. I was on the upper deck of each of those vessels on two or three occasions. They were burned about the decks. In other respects I thought they were in fair condition.

55. Question. What would you say in regard to the condition of those vessels, ordinarily speaking, as fit subjects to be salved?

Answer. In first class condition except the burning. All that was necessary was to stop up the holes that had been cut in the machinery piping, and pump the ships out.

Cross-examined by Mr. BINNEY:

1. Cross-question. Do you know when the lists of property taken which you say were furnished to the Coghlan board by the commanders of vessels were made out?

Answer. I think they were made out about the time the board was ordered to convene before it met. I remember Captain Wood telling me that he wanted a list of everything I had taken from the arsenal for use on the ship, and I am under the impression that was before the board convened; it may have been the latter part of May or the first part of June.

2. Cross-question. It appears from this report of the board that a circular letter requesting returns of property taken was addressed to each of the commanding officers of the several vessels on the 6th of June, 1898, and that inventories were received from them in response to that circular letter on or before the 13th of June. Have you any knowledge of these inventories having been made before they were asked for by the circular letter?

Answer. No, sir. So far as my ship was concerned these lists of stores taken from Cavite were made to the commanding officer by his order, and my recollection is it was a fleet order to the heads of all departments of all the ships of the fleet.

3. Cross-question. Can you remember the date when you made to Captain Wood a report of the stores taken by you for your department of the *Petrel?*

Answer. No; but it was a week or ten days or so after I had started on my duties as chief engineer of the yard. I remember this part because a steam steering engine that I had attempted to install aboard was not completed at the time I was ordered to make this report of the material I had taken from the yard.

4. Cross-question. Does that steam steering gear figure in the report made to the Coghlan board?

Answer. Yes, sir; it is in the list.

5. Cross-question. Was there any property taken for the *Petrel* between the time that you took charge of the property in the naval station and the time that the lists of property taken for the *Petrel* were made out?

Answer. No; when I took charge the looting was stopped.

6. Cross-question. Do you mean to say that after you took charge and until after the report of property taken for the *Petrel* was made no property was taken for the *Petrel* from the yard by your authority or by Captain Wood's orders?

Answer. I don't recollect of any being taken for any of the ships after I went there until after this board adjourned to await the call of the senior officer. In fact, my recollection is, some word was passed that nothing was to be taken from the yard while the board was in session, in order to allow the board to get an accurate account of what had been taken.

7. Cross-question. How long a period was it, according to your recollection, during which no property whatever was taken from the yard?

Answer. I should say about a week; during that time the board were in session, and they visited the yard and visited the ships in connection with making out their report.

8. Cross-question. Do I understand you, then, that you were put in charge of the stores in the yard about the 15th of May, and for about a week after that time nothing was taken from the yard for the use of the ships? Is that correct?

Answer. No, sir; I was ordered as the engineer of the Cavite Arsenal on about the 15th of May; I don't know the exact date. While I was there some of the material was taken on the different ships, but along after I had been there two or three weeks—I forget about the date—a board of appraisal was ordered, and at that time all officers in all departments were ordered to send in a list of the material they had taken from on shore, and orders were given that nothing further should be taken from shore until this board had made its return. That was some time after I took charge. When I first took charge this transfer of material was going on. Much of it had already been taken. So that of the items in the board of appraisal's list, a few were taken on the ships after I started, and the majority of them before. I don't know the dates. It is a question of a week or ten days one way or the other.

9. Cross-question. In preparing this list, Exhibit 2, did you have before you at the time a copy of the Coghlan board's list?

Answer. No, sir; I saw the Coghlan board's list afterwards. This is made up from my recollection of what was in the arsenal at the time I was in charge. I can't say whether this represents, item for item, the exact number of articles, even approximately, on hand on the 16th of May or the 31st of May or the 4th day of June, because we were constantly using from these stores, but approximately that was the amount I had fixed in my mind, that was the amount on hand.

10. Cross-question. When did you make this list?

Answer. I made this list in January or February last.

11. Cross-question. When did you leave Manila?

Answer. I left Manila the 8th of June, 1899.

12. Cross-question. What were your duties between September, 1898, when you ceased to have charge of the stores at the arsenal, and your final leaving?

Answer. From September 15 until Christmas Day, 1898, I was the chief engineer of the *Petrel*. From Christmas Day, 1898, until about the 1st of June, 1899, I was the chief engineer of the *Concord*. From about the 1st of June until the latter part of September, 1899, I was chief engineer of the *Boston*. Since October, 1899, I have been at the New York Navy-Yard.

13. Cross-question. Did you visit these various buildings containing stores in the arsenal after you ceased to have charge of them?

Answer. Yes, sir; frequently; but not in connection with any duty. It was just in a general way—visiting the shore.

14. Cross-question. Is this memorandum, Exhibit No. 2, made purely from memory or did you have any lists or memorandum from which you made it?

Answer. It is principally from memory.

15. Cross-question. At the time you were in charge of the stores had you any idea of making a permanent record of the property there?

Answer. None, whatever; other than a memorandum to which I could refer, if necessary, while at the yard. It was incomplete, and I think I left it with my successor.

16. Cross-question. Do I understand, then, that this list was made up by you wholly from your recollection of the stores which were in the yard, and that you had made an incomplete memorandum of them, which memorandum you had not seen, however, since September, 1898? Is that correct?

Answer. That is about correct; but the fact of my having been daily and frequently each day in the various buildings where these stores were kept, from the middle of May until the middle of September, impressed upon my mind the location and approximate quantities of the stores enumerated.

17. Cross-question. You spoke of stores having been taken by your order or by the orders of commanders of vessels. Was any record kept of such stores as were so taken when things got into regular order?

Answer. No, sir; no record was kept. We were simply judiciously dealing out the spoils.

18. Cross-question. When you visited the arsenal after your duties there ceased, did you take particular note of the stores which were there?

Answer. Yes, sir; particularly the general disposition of the stores. When I took charge of the arsenal the Admiral's instructions were to get all the work out of the arsenal possible, for when he left there he proposed to burn it. Some time after my tour of duty there ended, the policy changed, and the naval station was put in order on somewhat of a permanent basis, and the stores and materials were distributed about the storehouses in a more advantageous way. Many tons of stores had been received from the United States, and the captured material that had not been used had to be restowed in a different manner to accommodate these new stores that had arrived.

19. Cross-question. Various articles of the same character as those which are mentioned on this list, Exhibit No. 2, were taken from the arsenal between the time that you took charge and the time that lists began to be made for the Coghlan board, as I understand you; isn't that so?

Answer. There were articles taken from time to time from the storehouses after I took charge up to the time the order came that no more must be taken until the Coghlan board got through. My lists of stores relates to general quantities, approximate quantities, after the Coghlan board had settled matters and we were allowed to use the stores as before.

20. Cross-question. I notice, for instance, an item of "small boat anchors and chains." Can you state how many such anchors and how many fathoms of chain there were?

Answer. I should say that there was probably stowed in buildings 1 and 23, 300 fathoms of boat chain and at least 15 anchors.

21. Cross-question. To judge from the prices there was more left than was taken before the period to which your list relates?

Answer. In all instances there was an abundance for years to come of these things left over after the ships had replenished their outfits. This arsenal was a naval base, where stores were accumulated and ships' fittings for the Spanish fleet that possibly would have lasted for years; and it is the remaining lot to which my memorandum refers.

22. Cross-question. You have stated that the prices given in your list are given by your own knowledge of the prices of such stores?

Answer. Yes, sir.

23. Cross-question. Does your knowledge extend equally to every kind of stores that are mentioned there?

Answer. No, sir; my knowledge don't extend to the value of the items "medical outfit," nor possibly the value of a 4-inch gun; but for the general merchandise in this memorandum my estimate is, I think, a very fair one.

24. Cross-question. Then, in the case of medical outfits your valuation was a reasonable guess, was it?

Answer. Yes; it was an estimate of the value in a commercial way.

25. Cross-question. Is there anything else in the list the valuation of which does not come within your special knowledge?

Answer. The miscellaneous gun fittings on the second floor in building 4. I am a member of the inspection board of this yard. I inspect all the material for steam engineering that comes in here. I have to inspect all these things, and I am an expert on about all of this.

In regard to a lot of brooms and brushes and crockery, I am not an expert on the price of that; that was in the building marked 2, first floor.

On the second floor of building 4, miscellaneous stock of gun fittings and gear—those are the items I call to mind that I don't consider I am an expert on.

Adjourned to to-morrow, Saturday, May 26, 1900, at 10 a. m.

NAVY-YARD, BROOKLYN, N. Y., *May 26, 1900.*

Met pursuant to adjournment; all the parties being present as heretofore stated.

REYNOLD THOMAS HALL, being further cross-examined, testifies as follows:

By Mr. BINNEY:

26. Cross-question. Did you form any judgment as to the average length of time these stores had been in the arsenal buildings?

Answer. Generally speaking, I took no particular note of it; but apparently stores such as at home in our own naval stations might be in the yard for a year to three years, or longer.

27. Cross-question. You have noted down on your list that a very few of these articles were not in good order. Were all the others in thoroughly good order?

Answer. Yes; to the best of my belief.

28. Cross-question. Does metal rust very readily during the rainy season in the Philippines?

Answer. Yes; but this metal was stowed in buildings, much of it in racks and on shelves, and in the case of some steel, it was found there painted for a protection against rust.

29. Cross-question. Are the tons which you refer to in your statements of quantity long tons or short tons?

Answer. They are the short ton of 2,000 pounds.

30. Cross-question. On page 1 of your inventory you put down 15 tons hemp hawsers, $6,000; apparently $400 a ton. In class 8 of the Coghlan board's report the hemp hawsers appear to be valued at 12 cents a pound, which would make $240 a ton. Were these hemp hawsers that you have referred to better than those referred to by the Coghlan board?

Answer. I don't know; I don't remember seeing those referred to by the Coghlan board, and the hawsers I refer to were very large and very heavy, and possibly for that reason were not appropriated immediately by our ships.

31. Cross-question. Is not the price of hawsers generally regulated by their weight?

Answer. By their weight, and for various classes. These hawsers referred to in this list were heavy hemp hawsers; most of them were reeled up in large, heavy coils.

32. Cross-question. What size hawsers were they?

Answer. There were several sizes. I think they ran from 2 inches to 4½ inches in diameter; possibly some were a little larger than that.

33. Cross-question. These statements of inches in the Coghlan board's report refer to inches in diameter, don't they?

Answer. No, sir; hemp hawsers and ropes are all named by the circumference. Roughly speaking, a 3-inch hawser would be 1 inch in diameter.

34. Cross-question. Then you have no personal knowledge as to the value of any of the hawsers that figure in the Coghlan board's list?

Answer. No, sir.

35. Cross-question. On page 2 of your list you put down two annunciators, $450. In class 2 of the Coghlan board's list appears one annunciator, engine-room telegraph, $200. Were the annunciators that you refer to more valuable than this one?

Answer. I don't know. These on shore and in my list were complete.

36. Cross-question. The statement in the Coghlan board's list doesn't apparently refer to an incomplete one, does it?

Answer. I don't know, sir. An annunciator has, as a rule, two parts; the upper dial that is located on deck, and the lower dial that is in the engine room. These that I mention in my list were complete; the two were together. Those in the Coghlan board's list may not have been; I don't know about that.

37. Cross-question. Do you mean that these two annunciators were really one annunciator in two parts, and not two sets of annunciators?

Answer. There were two sets of annunciators; one annunciator with a dial on deck corresponding to one below in the engine room and there was another annunciator. There were two.

38. Cross-question. Is scrap iron worth more than pig iron, as a general rule?

Answer. That depends upon the quality—the class of pig and the class of scrap. Generally speaking, I should say the scrap iron and the pig iron can be procured at the same price, depending upon how small the scrap is, and also how excellent the quality of pig is. Both are used in the foundry, and used together, mixed with each other.

39. Cross-question. On page 4 of your list I notice "10 tons of iron scrap, $200;" that is, $20 a ton; on page 7, "10 tons pig and scrap, $150;" that is, $15 a ton; on page 10, "4 sets old engines, weighing about 80 tons scrap, $800;" that is, $10 a ton. What was the reason for such a difference in the prices of that scrap iron?

Answer. The 10 tons of scrap mentioned on page 4 was a select lot of scrap in the rear of the machine shop that was evidently being accumulated for use in the foundry, and being cut in comparatively small pieces made it, in my opinion, worth about $20 a ton. Page 7, 10 tons, at $15 a ton, was rough, irregular scrap and pig—fag-ends and croppings from old castings which were found in the foundry that required more or less labor in breaking it up before it could be used. Therefore, it was not so valuable as that already cut, that I have mentioned previously. Page 10, old engines, weighing about 80 tons of scrap. The reason the material was only considered worth $10 a ton is that in order to put it into shape to use it required considerable labor, which fact reduced the value. I might also state in this connection that $10 a ton is the customary estimate of similar material at the New York Navy-Yard. These estimates are made at the time boards of survey recommend the sale of old material.

40. Cross-question. Don't the estimates of boards of survey depend upon market rates?

Answer. In a measure; but in instances of old material it is my opinion and my experience that the price does not fluctuate with the market price of articles.

41. Cross-question. Does that practice of disregarding the market price make these prices given by boards of survey generally higher or lower than the market price?

Answer. It is generally much below the market price, because purchasers of this old material would not buy at anything near the market price on account of the amount of labor they have to expend to get the material into merchantable shape. All engines, boilers, and material of that kind that are purchased by junk dealers have to be broken up and considerable labor expended upon it before it can be resold by the dealer; and the fluctuations of market price don't enter into the estimates particularly.

42. Cross-question. On page 5 of your list you have "3 tons old condenser tubes, scrap, $600." Do I understand that that particular kind of scrap is worth $200 a ton?

Answer. Yes, sir. Condenser tubes are made of composition of a particular fine quality. They are generally coated with tin, and old condenser tubes melted down in the foundry, by the addition of new copper, make a very superior class of composition. In addition, the condenser tube is particularly valuable as scrap, because very little labor is required in breaking it up.

43. Cross-question. On page 4 of your list you note: "1 ton tin in pigs and sheets, $600." How much do you allow a sheet for that tin?

Answer. I didn't estimate on the sheets particularly. I just took the quantity estimated from what I saw that the tin was worth about $600.

44. Cross-question. About how many sheets would that be to a ton?

Answer. I don't know; that would depend upon the size of the sheets and the thickness.

45. Cross-question. You don't remember what size and thickness these sheets were?

Answer. No; I remember there were some sheets, but the most of it was pigs of Banca tin, which was evidently the stock for foundry use.

46. Cross-question. The Coghlan board reports, in class 21, six sheets tin at a trifle under 15 cents a sheet. How much would that come to a ton?

Answer. I don't know, sir, about the computations. I do know that the tin I mention here was stock tin for the foundry, and there were also stowed in the same place some sheets of tin.

47. Cross-question. On page 4 of your list you mention $75,000 worth of common and armor-piercing shells. What types or makes of shells were those?

Answer. Spanish, English, and German. That is simply my opinion. I do not remember seeing any marks to indicate their manufacture, but, judging from some fuses found in another place, they were German and Spanish, as these fuses were evidently for those classes of shells.

48. Cross-question. Do you recollect anything which gave you to understand that any of these were English; and if so, of what make?

Answer. I call to mind some conversation, some discussion, with somebody at Cavite—possibly a party of officers—in which the idea seemed to be prevalent that there were English Armstrong shells, armor-piercing, intended for some of the Hontoria guns. This is merely a vague recollection I have?

49. Cross-question. Then you do not identify any of these shells as of any particular type or make?

Answer. I identify them as shells in excellent condition. Many of them were enameled with a hard enamel and were an entirely new style to me; I had never seen any like them before; and I concluded from that that they were the very latest projectiles for the breech-loading guns.

50. Cross-question. Were they adapted for use in the breech-loading guns of their size on the American vessels?

Answer. No, sir; we had no guns on board our ships of that size.

51. Cross-question. You state the sizes as 3-inch, 4-inch, 5-inch, and 6-inch?

Answer. All the Spanish guns are designed and built with a bore on the metric system of measure. My recollection is, what we call a 4-inch gun with them corresponds to 4.2 or 4.7; so that these projectiles are not suitable for our calibers.

52. Cross-question. Practically speaking, then, these shells could not be used by the United States Navy?

Answer. Not with our guns; but they could be used with the guns that were captured on shore in Cavite. They could have been used in the guns captured on the Spanish ships. I took it that these projectiles were a part of the stores for those ships; part of their outfit of ammunition.

53. Cross-question. On the same page of your statement you refer to 4-inch breech-loading rifle, unmounted. What type of breech mechanism had that gun?

Answer. My recollection is that it had what is known as the slotted screw.

54. Cross-question. Had it a Canet breech mechanism?

Answer. It may have had; I don't recollect. I did not see the breech plug—simply the recess in which the plug fitted. The breech plug had evidently been hidden before we got on shore.

55. Cross-question. Then your valuation of this gun refers to it without the breech plug, does it?

Answer. Yes; as it was found.

56. Cross-question. Did you notice whether this gun was adapted for use with fixed ammunition or not?

Answer. I don't think it was; I don't remember.

57. Cross-question. And as you didn't see the breech plug, you don't know what kind of a gas check it had, then?

Answer. No.

58. Cross-question. And for the same reason, I suppose you can't say whether it would have been practicable to use this gun on any of the American vessels—that is, whether it was of the same type as their guns?

Answer. The same general type, but of different caliber. Ammunition for these Spanish guns and ammunition for our guns was not interchangeable; or, rather I should say, the projectiles were not interchangeable. Their method of putting the powder charge in bunting cases was the same apparently as our own.

59. Cross-question. In class 22 of the Coghlan board's list are mentioned 150 common 9-centimeter shells, at $3 apiece, and 105 common 7-centimeter shells, at $1 apiece. Those are rather lower rates than you have estimated the sells at, are they not?

Answer. Those are all common shells; 9 and 7 centimeter, and 37. Quite a number of these were steel shells, armor piercing.

60. Cross-question. About what valuation did you put on each of the kinds of shells in your list, common and armor piercing?

Answer. I estimated that the armor piercing shell was worth about $25, that the common shell was worth about $5.

61. Cross-question. Which sizes do you refer to?

Answer. I roughly estimated it in all of them; principally 4, 5, 6 inch; about the same. The difference in weight of metal required in the shell was a small matter for the different sizes.

62. Cross-question. Then, as you estimated the common shells at about $5, and the Coghlan board estimated them at $3 for 9 cetimeters and $1 for 7 centimeters, their estimate was rather lower than yours, was it not?

Answer. They apparently didn't estimate any of the same shells, not on those sizes; they are all smaller even than the smallest size I have mentioned. Nine centimeters is about 3.3. I mentioned 3 inch; that is the largest mentioned in their list. All the shells I speak of were larger. I didn't measure them. The ammunition mentioned in the Coghlan board's report is evidently ammunition for auxiliary batteries. This that I have mentioned here was the ammunition for the main battery of the ships. Much of the ammunition mentioned in that item of

the Coghlan board shows that it was fixed ammunition for machine guns. Thirty-seven millimeters was Hotchkiss revolving cannon; the 9 centimeters was Howitzer, and the 7 centimeters was the large size Maxim or Nordenfelt guns used in the secondary batteries of the Spanish ships. I may say, in addition, that I believe this ammunition mentioned in the Coghlan board's report was procured from magazines or about the decks of some of the sunken ships.

63. Cross-question. About how many centimeters was this breech-loading rifle that you have called 4 inch?

Answer. About 12 centimeters.

64. Cross-question. Would a 12-centimeter gun unmounted and without its breechblock be ordinarily worth three times as much as a 9-centimeter gun, mounted and complete?

Answer. For immediate use, I would say no; but for market value, it might be worth a great deal more. All that gun required was a new breech plug, so far as I know. The mount for the gun, or for guns of that size and style, was in another part of the Cavite arsenal.

65. Cross-question. But your estimate does not cover the mount?

Answer. My estimate does not cover the mount; it was for the gun alone.

66. Cross-question. On page 5 of your list you quote a ton of zinc at $300. That is 15 cents a pound. And in class 21 the Coghlan board quote zinc at 10 cents a pound, and zinc for boilers at 5 cents a pound, and sheet zinc at a trifle over 8 cents a pound. Was the zinc that you referred to better than that referred to by the Coghlan board, so far as you know?

Answer. I don't know about the Coghlan board's estimate on zinc appropriated.

67. Cross-question. On page 7 of your list you mention 25 tons iron rails, $1,500; that is $60 a ton. What kind of rails were those?

Answer. These were railroad rails, about 35 feet long; 3 or 4 inches high.

68. Cross-question. What weight of rail was it?

Answer. I don't know the weight per yard.

69. Cross-question. T rails, I suppose?

Answer. Yes; regular T railroad rails.

70. Cross-question. What was their value as compared with steel rails?

Answer. I don't know whether they were steel or not; I used the general expression, iron rails; I don't know about steel rails.

71. Cross-question. You don't know what steel rails were worth in the summer of 1898, do you?

Answer. No, sir; but I understand that railroad rails were worth about $60 a ton. If they were worth $60 a ton in the United States, they were worth a great deal more when shipped to the Philippines. So I estimated the value of the rails at $60 a ton.

72. Cross-question. On page 8 of your list you mention some bricks. Can you say about how much fire bricks weigh?

Answer. I should say a fire brick would weigh possibly 4 to 4¼ pounds.

73. Cross-question. Your list on pages 8 and 10 refers to Schwartzkopf torpedoes. Does the United States Navy use Schwartzkopf torpedoes?

Answer. I think not. I am not a torpedo expert, but I understand

that the Schwartzkopf torpedo is similar to the Whitehead. But Schwartzkopf has some improvement on the Whitehead, and it is a torpedo that has been adopted and used by the Germans. These torpedoes were the same size, in diameter, as those used by our fleet, and I understood they would fit the torpedo tubes of our vessels.

74. Cross-question. On page 9 of your list you refer to two steam launches without machinery, $5,000; that is $2,500 apiece. Do you know whether those were bigger or superior in any way to the launches mentioned in class 28 of the Coghlan board's report, where they refer to three launches apparently complete, at $1,500 apiece, and another at $1,200?

Answer. In my opinion, one of those launches that I mentioned is the same size as one of these, and the other one is much larger.

75. Cross-question. What kind of gun carriages are those that you refer to on page 8 of your list?

Answer. They are gun carriages that were found in the artillery shop, and evidently the 4-inch gun mentioned belonged in one of them.

76. Cross-question. What type of gun carriage were they?

Answer. They were a Spanish type; something in general appearance like the Canet mount.

77. Cross-question. What arrangements had they for taking up the recoil?

Answer. My recollection is they had the hydraulic cylinder and a set of springs.

78. Cross-question. Who succeeded you in charge of these stores at the arsenal?

Answer. I was succeeded and relieved from duty at the Cavite naval station by Passed Assistant Engineer H. W. Jones. He relieved me about the 15th of September.

79. Cross-question. About how much of this material that figures on your list came under his charge? How much remained there and how much was distributed?

Answer. I believe it was all just turned over to him; he relieved me and carried on the work, and he had the keys of the places; but shortly after his term I think the paymaster took charge of the storehouses. I have forgotten how it was.

80. Cross-question. I mean out of the $303,242 worth of stuff that you have mentioned on this list, about what proportion was issued by you during your period of office, and how much remained and was turned over to him?

Answer. I estimate that we used $50,000 of material during the time I was there in making repairs on vessels, fitting out the tugs and launches, repairing buildings, and establishing quarters for the army expeditions which arrived, repairing the transports and vessels that we detained on account of the coal they had in the cargo.

81. Cross-question. Do you know what paymaster succeeded Chief Engineer Jones?

Answer. The paymaster in charge of the arsenal was the fleet paymaster, Daniel Smith, pay director. He was succeeded by Paymaster E. G. Ryan about the time when stores arrived from the United States.

82. Cross-question. You have stated that some of the articles named in

class 2 of the Coghlan board's list were taken from Spanish vessels. Were any of them taken from vessels which were captured afloat and not sunk?

Answer. No, sir.

83. Cross-question. Were any of them taken from vessels which were sunk but afterwards raised?

Answer. I think so, yes, sir; the "eight lamps, signal cable with Ardois."

84. Cross-question. What vessel did they come from?

Answer. I think they came from one of the *Islas* or the *Don Juan de Austria*. Two searchlights, I think, came from one of those ships. I think the engine-room telegraph came from one of those ships. The remaining items, which appear to be spare parts, I think, possibly, were taken from the ships and from the shore.

85. Cross-question. You can't separate those which came from the shore and those which came from the ships?

Answer. No, sir.

86. Cross-question. In the case of class 6, you said you couldn't locate the articles. Didn't they all come from the shore?

Answer. Yes; I think so.

87. Cross-question. In class 16, can you identify any of the articles which you so believe to have come from vessels?

Answer. I think all this stuff must have been taken from ships. It is what a ship generally carries in the pilot house, on the bridge, and in the chart room.

88. Cross-question. Do you mean to say that you don't think any of class 16 came from the arsenal?

Answer. I don't think it came from shore; it is all material from the bridge or pilot house or chart house of ships. Everything there is used in connection with navigating the ship.

89. Cross-question. Didn't they have any supplies of that kind in the arsenal?

Answer. Yes, I think they had.

90. Cross-question. But in point of fact, you don't know whether these were taken from ships or not?

Answer. I don't know positively.

91. Cross-question. And of course you don't know whether, if taken from ships, they were taken from ships that were still afloat or ships which had been sunk?

Answer. If they were taken from ships, they were certainly taken from ships that were sunk. There was nothing afloat.

92. Cross-question. The *Manila*, for instance, was afloat?

Answer. The *Manila* was taken bodily. This report of Coghlan board includes an estimate on the *Manila*, and I suppose that they estimated on her just as she stood, full of stores. I do know that the *Manila*, when we brought her off, had a lot of material and stores of that kind, and implements, on board.

93. Cross-question. You stated that you do not know where class 18 of the Coghlan board list came from. Did you mean that you didn't know where it came from on shore, or whether it came from the arsenal or not?

Answer. I mean that I didn't know whether it came from on shore or on the ships.

94. Cross-question. You say that one cutter referred to in class 28 of the Coghlan board list was on the ways on shore. Is that the cutter marked as new?

Answer. That is evidently a different boat; I should have said steam cutter. This in the report is evidently a pulling boat; I spoke of steamers.

95. Cross-question. Do you mean that the cutters you have in mind are not in the Coghlan board's list at all?

Answer. Yes, sir; they are not in the list, to the best of my belief. The cutters I was referring to in that answer are mentioned on my list, page 9, as 2 steam launches; one was on the ways and one in the water.

96. Cross-question. Do I understand you to state that the six launches mentioned in the Coghlan board's list were launches belonging to the Spanish war vessels which were sunk?

Answer. I think they were.

97. Cross-question. They are what you think the crews got ashore in?

Answer. Yes, sir.

98. Cross-question. Under what circumstances was the *Consuelo* taken?

Answer. My recollection is the *Consuelo* was captured while crossing the bay by one of our ships; I think the *Boston*.

99. Cross-question. Do you remember the circumstances under which the *Hercules* was taken?

Answer. Yes, sir; in the afternoon of the 1st of May, after some of the ships had been set on fire, and while they were setting the other ships on fire by a party from the *Petrel*, another party in charge of Lieutenant Fiske, the navigator, left the *Petrel* and going into the arsenal collected a tug, the *Rapido*, another tug, the *Hercules*, and three launches, and towed them off to the ship. As night came on the *Petrel* steamed out into the bay to join the flagship and towed these vessels out. The boiler of the *Hercules* was still hot at the time she was taken. The next day we got up steam, and she was used as a tender to the *Petrel* for the balance of the year. Her name was changed to the *Petrelita*. The tug was armed with a Hotchkiss revolving cannon.

100. Cross-question. But she was tied up at the wharf at the arsenal, was she?

Answer. She was at the wharf.

101. Cross-question. Was the *Rapido* armed?

Answer. Her guns were not mounted, and she was under repairs at the time.

102. Cross-question. Was the *Iloilo* armed?

Answer. The *Iloilo* was armed and was carrying troops and cattle some time after the 1st of May, and was captured by the *Baltimore* in Manila Bay; I think at Miravalles, or near there.

103. Cross-question. You have stated that the *Mindanao* was incomplete. In what way was she incomplete?

Answer. Her engines and boilers were in place, but they were not connected; her masts were stepped but were not rigged; her steering gear was not connected; her propellers and propeller shafts were not in place, for we found them in the arsenal shops; and she was used as a powder hulk; some 30 or 40 tons of powder were thrown overboard from her.

104. Cross-question. In your list where you have stated large quantities of stores, as, for instance, 10,000 boiler tubes, 5,000 shells, 15 tons hawsers, etc., those are merely rough guesses on your part, are they not; not statements made as the result of any measurement at all?

Answer. Not from the result of any accurate measurement, but an estimate of the quantities which is based on my knowledge and experience with lots of material of that kind.

105. Cross-question. Might there, for instance, have been less than 15 tons of hawsers?

Answer. There might have been less; there might have been more; I estimated the amount of coal in the *Manila*, which is mentioned in the report of the Coghlan board. I also estimated the amount of coal at the naval arsenal, which is in this report of the Coghlan board. The estimates were made to Commander Wood, the captain of the *Petrel*, made at his request.

106. Cross-question. The same possibility of the quantities being more or less than as stated by you is true of all these estimates of large quantities of stores, is it not?

Answer. Yes, sir. They are all estimates based on my experience there.

Redirect by Mr. KING:

1. Redirect question. Referring to your estimate of the 5,000 common and armor-piercing shells on page 4, I would like to have you say, if you can, what proportion of these shells were common and what proportion armor piercing.

Answer. I should say, considering all the various sizes, that they were about equally divided—half armor piercing and half common.

2. Redirect question. Was there any difference in the sizes as to the relative amount of common and armor-piercing shells?

Answer. It is my recollection the armor-piercing shell were of the larger caliber.

3. Redirect question. Can you state what proportion were 3-inch, what 4-inch, what 5-inch, and what 6-inch?

Answer. No, sir.

4. Redirect question. Do you know how large the armor-piercing shells are made—what the different sizes are? Do you know what the smallest size of armor-piercing shell is?

Answer. I think about 3-inch. Machine guns carry armor-piercing shell, but it is fixed ammunition; there were some armor-piercing projectiles of about ½-inch caliber.

5. Redirect question. In referring to the question of rails which you give as iron rails, can you state whether those were iron or steel rails?

Answer. I can not. I used the general expression, iron rails; they may have been steel.

6. Redirect question. Please state on what basis you fix the value of zinc at 15 cents a pound.

Answer. My recollection and experience was that zinc is worth about 15 cents a pound.

7. Redirect question. Referring now to the two steam launches on page 9 of your estimate, which you value at $5,000, please state what their

relation in size was to the two steam launches contained in class 28 of the Coghlan board's report valued at $4,500 each.

Answer. One was about the size of these and the other one was rather smaller.

8. Redirect question. In the report of the Coghlan board the coal-bunker capacity of the *Manila* is given at 204 tons, while your estimate was that she had on board of her about 550 tons of coal. Can you give any explanation in regard to that?

Answer. I believe the figures under the head of "Iron-hull transport *Manila*" are taken from some of the Government lists, possibly the list of the Spanish Government Naval Register, in which her bunker capacity is taken at 204 tons. That is nominal capacity. All ships may take more or they may take less coal. When I went on board the *Manila* to get her under way on the night of the 3d of May, I think it was, I found in her bunkers about 250 tons of coal, and her main hold filled, which I afterwards calculated and gave Captain Wood an estimate of about 300 tons in the main hold.

9. Redirect question. What use could have been made of the guns captured from the Spaniards without Spanish ammunition?

Answer. Excepting a few Hotchkiss revolving cannon, I don't think any offensive use could be made of them.

10. Redirect question. Why couldn't we use ours in the Spanish guns?

Answer. All the Spanish guns are of different caliber.

By Mr. MICOU:

11. Redirect question. Do you know of any cascos or cargo boats that were captured?

Answer. Yes, sir.

12. Redirect question. What were they? How many of them were there as well as you remember?

Answer. We captured or took possession of 8 or 10 at first, and afterwards, as the army expeditions arrived and the stores and men had to be landed, we sent around the bay and captured a number more whenever we felt we had the need of them.

13. Redirect question. Do you know about the number that were taken?

Answer. I think all together we had about 20.

14. Redirect question. What character of boat is it? Describe it.

Answer. It is a large barge, rather larger than the ordinary canal boat; it has one deep, commodious hold in which the cargo is carried, and over the top has a thatched bamboo covering made in sections cut athwartships, which slide past one another.

15. Redirect question. Do you know the value of those cascos?

Answer. I should say they were worth about $3,000 each.

Recross by Mr. BINNEY:

1. Recross-question. What is the tonnage of these cascos; about?

Answer. I think the cascos would carry about 140 tons of coal.

2. Recross-question. How were they propelled?

Answer. By sweeps and by poling; but we always moved them by tugs and launches.

3. Recross-question. Then you couldn't have put a prize crew aboard and sent them into the nearest neutral port, could you?

Answer. Not very well. We generally captured the crew with the boat, as there was a little house on the deck in which the natives lived.

4. Recross-question. These cascos were private property, were they not?

Answer. I think nearly all of them were.

5. Recross-question. And you don't know, of course, as to their actual ownership, as to whether all of them were owned by subjects of Spain, or whether any of them were owned by neutrals?

Answer. No, sir; I think they were principally owned by natives.

6. Recross-question. But you don't know positively about the ownership?

Answer. No, sir.

7. Recross-question. They were not provided with ship's papers, I suppose?

Answer. No, sir.

By Mr. KING:

16. Redirect question. Do you know anything further bearing on the subject-matter of this case? If so, answer yea; if not, answer nay.

Answer. Nothing, unless I am specially interrogated upon it.

R. T. HALL.

Sworn to before me this 25th day of May, 1900.

ETHEL POWERS,
Notary Public, New York County.

STATE OF NEW YORK,
City and county of New York, ss:

I, Ethel Powers, a notary public, duly appointed for the county of New York, do hereby certify that on the 25th and 26th days of May, in the year of our Lord one thousand nine hundred, I was attended by William B. King, esq., and Benjamin Micou, esq., of counsel for the libellant, and by Charles C. Binney, esq., of counsel for the United States, and by the witness, who was of sound mind and lawful age, and the witness was by me first carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition made by him was reduced to writing by me, from his statement, and he, after carefully reading the same, subscribed the same after having made the alterations indicated thereon.

I further certify that the annexed exhibits marked 1 and 2 were produced by the witness upon his said examination and were marked in evidence by me.

And I do further certify that I am not of counsel nor attorney for either of the parties in the deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof I have hereunto set my hand this 9th day of June, in the year of our Lord 1900.

ETHEL POWERS,
Notary Public, New York County.

EXHIBIT 2 to deposition of Reynold T. Hall.

Memorandum of stores in Cavite naval station when plant was started, May, 1898.

BUILDING MARKED NO. 1.

	Estimated value.
First floor:	
15 tons hemp hawsers	$6,000.00
Blocks and falls	400.00
Heavy purchases	200.00
Ship's fittings, miscellaneous	400.00
Portable forges	400.00
Fire tools	100.00
Coal and ash buckets	100.00
Breakers and scuttle butts	100.00
Ship carpenter's tools	250.00
Small-boat anchors and chains	215.00
Two blast blowers	125.00
Two ship's galleys	150.00
Two large searchlights	850.00
Second floor:	
Side lights	150.00
Lamps and lanterns	150.00
Ships carpenter's and ships fitter's tools	350.00
Handspikes	50.00
Capstan bars	200.00
Plumbers' supplies and tools	200.00
22 sections of suction hose, 3 inch	880.00
Two annunciators	450.00
8 binnacles, brass	1,000.00
Cork and hemp fenders	90.00
Grapnels	48.00
Shackles	50.00
One fog siren machine	100.00
4 rolls hair felt	200.00
60 sheets asbestos paper, about 16 square feet, one-fourth inch thick	40.00
3 sets bales and cones, for long distance signalling	90.00
Two large cases medical stores and outfit, such as splints and bandages, test tubes, laboratory gear, bottles, and vials	100.00
Four "Handy billy" pumps	120.00

BUILDING MARKED NO. 2.

First floor:	
300 gallons lubricating oil	180.00
1,000 pounds paint, assorted	120.00
300 pounds tallow	30.00
5 tins, 10 gallons each, varnish	50.00
6 barrels rosin	25.00
500 pounds iron nails, spikes, bolts, and screws, assorted sizes	50.00
10 kegs boiler rivets, assorted sizes	96.00
20 bales prepared chalk, for "shenam"	30.00
4 coils of 2-inch wire hawser, in lengths	400.00
8 tons angle, T, and Z iron, assorted sizes	320.00
Second floor:	
500 pounds heavy rubber sheet, 1-inch thick	500.00
600 pounds asbestos and rubber packing	360.00
500 glasses, for side ports	300.00
A lot of brooms, brushes, lamp shades, glass and china ware, boiler gaskets, rubber tubing, etc., household furniture, crockery, boat awnings, various carpenter and ship-fitter tools	400.00

BUILDING MARKED NO. 3.

First floor:	
One lot of miscellaneous junk, including wire hawsers, hemp and manila rope, hose, old canvas, fire buckets, leather	200.00

BUILDING MARKED NO. 4.

	Estimated value.
First floor:	
One Bellville steam boiler, complete, new	$4,000.00
200 tons iron and steel, in bars, round, square, angle, and beam, assorted sizes	8,000.00
400 sheets iron, corrugated, galvanized, for roofing, 9 feet by 3 feet, about	800.00
10,000 boiler tubes, iron and brass, assorted sizes	35,400.00
50 tons sheet iron and steel, bulkhead and boiler, assorted sizes	2,000.00
One searchlight and pedestal, complete, lens broken	400.00
5,000 common and armor piercing shells, approximately 3, 4, 5, and 6 inch	75,000.00
One ton tin, in pigs and sheets	600.00
1,000 pounds lead, in pigs	80.00
Second floor:	
Miscellaneous stock gun fittings and gun gear, fuses, passing boxes, sight boxes, sponges, powder tanks, tompions and spare parts, field carriages, boat carriages, bayonets, cutlasses, boarding pikes and battle axes, loading tools	500.00

BUILDING MARKED NO. 5.

First floor:	
400 sheets iron, galvanized, corrugated, for roofing	800.00
3 heavy hemp hawsers	360.00
70 tons sheet iron and steel, assorted sizes	2,800.00
4 tons iron, brass and copper pipe and tubing, assorted sizes	3,200.00
10 tons iron, scrap	200.00
1 breech-loading rifle, unmounted (4-inch)	3,600.00
1 ton zinc, in pigs and slabs	300.00
1,000 pounds sheet zinc, assorted sizes	150.00
5 tons brass and copper rod, principally round, assorted sizes	2,300.00

BUILDING MARKED NO. 6 (MACHINE SHOP).

First floor:	
3 tons miscellaneous brass castings	600.00
5 steam-launch engines, complete	7,500.00
4 steam-launch propellers, composition	200.00
3 tons old condenser tube, scrap	600.00
4 steam pumps	400.00

BUILDING MARKED NO. 7 (MACHINE SHOP).

First floor:	
6 steam-launch engines	9,000.00
4 lengths main shafting, for marine engines	1,000.00
2 crank shafts	1,500.00
2 propeller shafts	750.00
3 steam-launch propellers, composition	150.00
One lot of miscellaneous gear, such as steam gauges, steam, vacuum, and water gauges, oil cups, oil arrangements, brass and copper pipes and fittings	400.00
1,000 pounds brass, copper, and iron wire, assorted sizes	250.00

BUILDING MARKED NO. 8 (BLACKSMITH SHOP).

4 tons stock iron, various shapes	160.00

BUILDING MARKED NO. 9.

320 cubic feet boiler-covering plaster	64.00

BUILDING MARKED NO. 10 (BOILER SHOP).

500 iron and brass boiler tubes, assorted sizes	2,000.00
20 tons sheet iron and steel, assorted sizes	1,000.00
6 steam-launch boilers	3,000.00
2 large ship's galleys	2,000.00

BUILDING MARKED NO. 11 (FIRE HOUSE).

	Estimated value.
1 steam fire engine, on wheels	$5,000.00
1 hose reel, on carriage	500.00
800 feet cotton and rubber fire hose	360.00
50 fire buckets, leather	250.00

BUILDING MARKED NO. 12.

BUILDING MARKED NO. 13 (YARD AND DOCK STOREHOUSE).

25 tons iron rails	1,500.00
250 barrels of cement	1,000.00
4,000 bushels lime	800.00
20 barrels rosin	70.00

BUILDING MARKED NO. 14 (PATTERN SHOP AND STORE).

Miscellaneous lot of patterns for ship's machinery	4,000.00

BUILDING MARKED NO. 15 (FOUNDRY).

1,000 pounds tin, in pigs	300.00
2,000 pounds copper, in pigs	400.00
800 pounds zinc, in pigs	120.00
10 tons iron, in pig and scrap	150.00
75 cubic feet of moulding sand	15.00
20 bales of charcoal	20.00

PILED INSIDE OF WEST WALL, MARKED NO. 16.

5,000 fire bricks	250.00
500 red bricks	4.00

ON LOT NEAR BY, MARKED NO. 17.

50,000 cubic feet timber, heavy sticks	5,000.00

BUILDING MARKED NO. 18 (TORPEDO STOREHOUSE).

2 torpedoes, Schwarzkoff, without heads	7,500.00
1 submarine mine, with electric attachment	400.00

BUILDING MARKED NO. 19, ADJOINING ABOVE.

200,000 cubic feet lumber, in sticks of various sizes	20,000.00

BUILDING MARKED NO. 18½ (ARTILLERY SHOP).

4 gun carriages, without guns, apparently 4-inch gun mounts	10,000.00
1 pivot carriage, for 5-inch gun	4,000.00

BUILDING MARKED NO. 20, BOILER SHED.

6 large boilers, old, marine, used by us as water tanks	1,800.00
2 boilers, marine, good condition, used by us on vessels	5,000.00
3 smokestacks, for various vessels	1,200.00

BUILDING MARKED NO. 21, CARPENTER SHED.

2 steam launches, no machinery, since fitted up	5,000.00
New deck house	400.00
Lot carpenters' tools and chests	500.00

BUILDING MARKED NO. 22, IRON-PLATING SHOP.

12 submarine mines, 5 feet long by 2 feet 6 inches diameter, wrought iron cylinders	600.00
1,000 pounds light sheet iron, various sizes	20.00

BUILDINGS MARKED NO. 23, STOREHOUSE ON SOUTH WHARF.

	Estimated value.
Lot of miscellaneous equipment stores *Velasco*, *Bulusan*, and other vessels	$2,500.00
50 tons chain cables and moorings	2,500.00
Several can buoys	1,500.00
A lot of riggers' supplies	200.00
5 tons copper piping	2,000.00
20 manila hawsers, heavy, on reels	4,000.00
4 Schwarzkoff torpedoes, without heads	15,000.00
ON END OF WHARF, MARKED NO. 24.	
3 large boilers, marine	1,200.00
ON END OF POINT, NEAR FORT, MARKED NO. 25.	
80 cans Rathjen's hull paint	2,400.00
ON LOT NEAR BUILDING MARKED NO. 1, MARKED NO. 26.	
12 propeller blades, iron or brass	2,400.00
3 anchors, about 4,000 pounds each	1,200.00
4 shafts	500.00
4 sets old engines, weighing about 80 tons, scrap	800.00
2 propellers, about 8 feet diameter	3,200.00
Total	303,242.00

Deposition of Gustav Kaemmerling, on behalf of libellant, taken at Boston, Mass., June 25, 1900.

STATE OF MASSACHUSETTS,
County of Suffolk:

I, Charles Hall Adams, a notary public duly appointed for the county aforesaid, do hereby certify that on the 25th day of June, A. D. 1900, I was attended by William B. King, esq., of counsel for libellant, and Charles C. Binney, esq., counsel for the United States, and by the witness, who was of sound mind and lawful age; the witness was by me carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition made by him was reduced to writing by a disinterested stenographer, H. A. Pickering, from his statements, and he, after carefully reading the same, subscribed the same; it was agreed by counsel that the appointment of a special commissioner to take the testimony aforesaid should be waived and no objection made to the taking of said testimony before me as notary public aforesaid; and I do further certify that I am not of counsel or attorney for either of the parties in the said cause nor in any way interested in the event of the cause.

In testimony whereof I have hereunto set my hand this 25th day of June in the year 1900.

CHAS. HALL ADAMS,
Notary Public for Suffolk County, Mass.

By Mr. KING:

1. Question. What is your name, age, occupation, and residence?

Answer. Gustav Kaemmerling; age, 42 years; occupation, lieutenant in the United States Navy; residence, Boston.

2. Question. Where were you stationed in May, 1898?

Answer. On board the United States flagship *Olympia* in Manila Bay.

3. Question. How long did you stay in that vicinity?

Answer. In the vicinity of Manila Bay?

4. Question. Yes.

Answer. A little over a year.

5. Question. What particular duties did you perform on the flagship *Olympia?*

Answer. I was first assistant engineer.

6. Question. Were you on shore during this time at the Cavite arsenal?

Answer. I was on shore during part of this time.

7. Question. After the battle of Manila Bay, on May 1, 1898, when did you first go on shore?

Answer. I don't remember the exact date; but shortly after that I was on shore and working in overhauling some small tugs or boats that we had taken from the Spaniards.

8. Question. Whereabouts did you go on shore at that time?

Answer. The tugs were lying at the dock and men were at work there from the ship and most of our work was done right there, and it was only occasionally I had some work to do on the tools up in the shops.

9. Question. This was at the navy-yard at Cavite?

Answer. This was at the navy-yard at Cavite; yes, sir.

10. Question. How soon after the 1st of May was that?

Answer. I can't tell; it was very shortly, though, because the purpose was to put into immediate use some of the boats which were taken from the enemy.

11. Question. Who was the commandant at that time?

Answer. When I first went on shore there was no commandant, but shortly after I had been working on shore Lieutenant Hodges was sent ashore; I don't remember his title, but I think it was in the nature or capacity of commandant of the yard.

12. Question. That was before Captain Wood took charge?

Answer. Oh, yes, sir.

13. Question. After this work which you speak of was finished when did you go ashore at Cavite again?

Answer. I think the latter part of September or the early part of October; one of those two.

14. Question. What was the purpose then of your going ashore?

Answer. Why, the Admiral wanted me to take charge of the engineering work in the yard, in the shops.

15. Question. Who was commandant then?

Answer. Captain Leutze; I call him captain; he was commander in rank, I believe.

16. Question. Please state in general what were your duties as engineering officer.

Answer. All the shops, except the boat shed, were put in my charge; I had the employment of the men, the organization of the force, the taking of the work and executing it and delivering it.

17. Question. Did you find any stores on shore at that time?

Answer. Which time; the first time or the second time?

18. Question. The second time?

Answer. The second time; yes, sir.

19. Question. How long did you stay on shore in that capacity?

Answer. Until the week we left Manila, which was about eight months.

20. Question. That would be in 1899?

Answer. Yes, sir.

21. Question. Can you state in general what sort of stores there were there on shore?

Answer. No; except that the yard was very well equipped, and they had a great deal, a very large stock of raw material in the way of iron and other metals, timber, and some tools and machinery, ships fittings and things of that description; also oils; in fact, every thing that was needed to equip a yard.

22. Question. Aside from these articles you speak of, was there permanent machinery?

Answer. Yes, sir; a large amount of machinery.

23. Question. What class of machines were they?

Answer. What do you mean?

24. Question. What kind of machines were they?

Answer. They had machines of various kinds; a machine shop had the largest number, and they had a large number of tools in what was called the plate shop, and a number of necessary tools in the smith shops, and appliances that were necessary in other shops.

25. Question. Were those stores which you found ashore when you took charge as engineering officer property from the United States, or if not, what were they?

Answer. Why, shortly—as I recall it now—shortly before I was ordered ashore the *City of Pekin* had arrived with a large amount of material from the United States, but I don't recall whether any of that had been landed before I had been ordered ashore or not.

26. Question. What sort of stuff was that?

Answer. They had a large stock of lumber and some fittings and some tools, and a lot of stores in the way of provisions; quite an amount of the material that was brought there by the *City of Pekin* was taken back by her and was not landed.

27. Question. Why was that?

Answer. Because the Admiral was uncertain what course was to be pursued and was not going to lumber up the yard with it.

28. Question. What do you mean by "fittings?"

Answer. Pipe fittings, valves, etc.

29. Question. Do you know the nature of the stores which were sent back?

Answer. Plates, I think; principally steel plates.

30. Question. Were there other stores at Cavite besides what came from the United States?

Answer. Stores left there by the Spaniards; yes, sir.

31. Question. And they were of the character of which you have already spoken?

Answer. The things that I alluded to first, you mean?

32. Question. Yes.

Answer. Yes, sir.

33. Question. When you first went ashore shortly after the battle did you use any of the Spanish stores?

Answer. Yes, sir.

34. Question. What formalities did you use in getting possession of them for official use?

Answer. None.

35. Question. How did you get them?

Answer. We took them.

36. Question. Have you any knowledge as to whether others of the Navy took stores also in the same way?

Answer. Those on the ships, do you mean?

37. Question. Yes.

Answer. Yes, sir.

38. Question. When you took charge as engineering officer what formalities, if any, were required for the taking of stores for official use?

Answer. Required of me or of the others?

39. Question. Required of others.

Answer. At that time I believe—I think nothing could be taken from the yard without the permission of the commandant of the yard.

40. Question. Was there at that time any paymaster in charge of the stores?

Answer. The paymaster of the flagship, I, think was given charge of the stores, I think at that time or a little earlier.

41. Question. Who was he?

Answer. Daniel Smith; I don't remember his middle initial.

42. Question. Daniel A. Smith, wasn't it?

Answer. Yes, sir.

43. Question. Do you know whether he took them up formally on his account?

Answer. I don't know, but I believe not; there was no way of doing it.

44. Question. What pay officer followed him?

Answer. It was Mr. Ryan, I think.

45. Question. Please give the full name.

Answer. Eugene D.

46. Question. Do you know when it was that Paymaster Ryan came?

Answer. I can't tell, but it was about the same time that I was there, either a little earlier or a little later; he was sent ahead of me, I remember now.

47. Question. After you took charge as engineering officer was there any system adopted for the issuance of the Spanish stores?

Answer. My recollection now is that when I was first ordered ashore I had access to certain of the stores in the way of material; but a little later on I obtained no stores except through a chit sent to the paymaster who would turn over to me what I asked for.

48. Question. When you say you "had access" to certain of the stores, what do you mean by that?

Answer. There was one storehouse there in particular that had a lot of iron bars and material of that description, and my recollection is now that pertaining to my duty there I could get them without making any special requisition for them.

49. Question. Do you remember whether Paymaster Ryan at any time made any inventory of all the Spanish stores in the yard?

Answer. I do not.

50. Question. Did you yourself at any time make any kind of an inventory of the stores?

Answer. I did not.

51. Question. Can you state whether there was any change made in the locations of the different classes of stores at any time after the United States took possession?

Answer. Yes, sir; there was.

52. Question. When was that?

Answer. I do not think it was begun until after I was ordered ashore, and I believe that one of the reasons for doing it was to make room for some of the stores on the *Pekin*.

53. Question. What in general were the changes made in the arrangement?

Answer. Well, I don't know that I could tell, excepting that I think the paymaster's object was to get stores that were needed for immediate issue and perishable and valuable goods from the storehouse under his eye.

54. Question. Have you examined the memorandum of stores in the Cavite naval station, May, 1898, annexed as an exhibit to the deposition of lieutenant, Commandant Hall?

Answer. Yes, sir; I have.

55. Question. I now hand you that memorandum, which appears in this cause as an exhibit to his deposition, and ask you to look over that and state in detail whether you remember the articles named there by him?

Answer. Do you mean as to quantities?

56. Question. Either as to quantities or as to the articles themselves; begining with the first page, with the building marked No. 1, first floor, and state what you remember with regard to the various articles mentioned.

Answer. I know there was a lot of hemp hawsers; as to quantities, I wouldn't undertake to say; and blocks and falls; and heavy purchases; and ship's fittings of various kinds; portable forges, I can't recall; fire tools, yes; coal and ash buckets, yes; breakers and scuttle butts, yes; ship carpenter's tools, yes; small-boat anchors and chains, yes; two blast blowers, yes; two ship's galleys, yes; there were a number, I know, but I don't know just how many; searchlights, yes; how many, I don't know.

Mr. BINNEY. To save time, suppose you indicate what you don't remember, and so save going over the whole list item by item.

57. Question. As to the articles you have mentioned, have you any knowledge, and if so, what, in regard to the values of any or all of these classes of articles mentioned?

Answer. I wouldn't undertake to give an estimate of values, except that I know there was a great lot of them.

58. Question. Now please proceed as to the second floor, and as suggested by Mr. Binney, state what articles you do not remember.

Answer. I don't remember about the number of annunciators; I remember the binnacles; I don't recall seeing the fog siren, although I heard it spoken of; all the rest I do remember; I recall them and have a recollection of seeing them.

59. Question. Can you state anything as to the value of those or the quantities?

Answer. From the faint recollection I have of the medical stores there, it seems to me that his estimate is very low for that, because, as I remember, there was a lot of instruments and such things there.

60. Question. What would be your idea as to the value of the medical stores?

Answer. I could not make an estimate, except I can say I was amazed at the number of them.

61. Question. Can you give any idea of the number of the brass binnacles?

Answer. No; I can not.

62. Question. Do you know anything about the sections of suction hose other than what you have stated?

Answer. Yes; I know there was a large number, a large quantity of hose, and all in excellent condition.

63. Question. Now, proceeding to the building marked No. 2, first floor, please state what you fail to remember in that list?

Answer. I don't recall some of those details, I remember them all in a general way. I don't remember the varnish. I don't remember any particular hawsers in that particular place; I remember a lot of hawsers there, but where it was I don't know; I think his estimate as to the amount of oil there is conservative. I don't recall about the brooms and lamp shades and china ware, etc.

64. Question. You do remember the articles mentioned there on the first and second floors of that building?

Answer. Yes, sir.

65. Question. Now please proceed to the building marked No. 3. What is your recollection of that?

Answer. I remember those things.

66. Question. Proceed now to the building marked No. 4. What is your recollection as to the articles named by him in that building?

Answer. I remember all those in a general way, excepting I know there were some search lights there, but where they were I don't know.

67. Question. What do you remember about the boiler tubes?

Answer. I know they had a very large lot of them of various sizes.

68. Question. Of what materials were those?

Answer. Principally iron and brass; they may have had some steel ones, but I don't think so.

69. Question. What recollection have you as to the shells?

Answer. I remember there was a very large stock of them.

70. Question. Were there any other stores in that building as far as you remember besides those mentioned?

Answer. Not that I can recall now. I think he don't include in those all the different shells there; I think they had some smaller ones, and also some larger ones.

71. Question. How about the stuff marked as on the second floor?

Answer. I recall that in a general way; there was a great deal of it, and I remember particularly when it was taken out; I recall that there was a great deal of that.

72. Question. Proceed now to the building marked No. 5. What is your recollection on that?

Answer. When I say that I remember these particular things, in a great many cases I remember the articles, but I don't recall the special building they were in. I know there was a great lot of this sheet iron, corrugated iron, and galvanized iron, and these heavy hawsers here.

73. Question. Can you give any reason why you should recollect the articles and not recall their special place?

Answer. I was very busy at my work and never went to the storehouse unless I went to get something, and I didn't try to carry it in my mind.

74. Question. Where was the principal part of your work performed?

Answer. If not in the office I was about the shops. There was a lot of scrap iron about the place, but, for instance, I can't locate 10 tons of scrap iron in these items. I recall one breech-loading rifle, but just exactly what building it was in I don't know.

75. Question. What have you to say in regard to the sheet zinc?

Answer. I know they had some there, but I don't know how much. We used some of that.

76. Question. Was there any other sheet metals besides zinc?

Answer. There was sheet brass, sheet copper, used for coppersmith work, and copper sheathing, and also sheet lead.

77. Question. Can you tell how much there was?

Answer. No; except that there was tons of it.

78. Question. Where was that?

Answer. I think in one of the upper buildings.

79. Question. Was that Spanish property also?

Answer. Spanish property; yes, sir.

80. Question. Of the articles named as in building No. 6, what is your recollection?

Answer. I remember those articles, but I don't remember their special location.

81. Question. Please state whether you remember all the articles in building No. 7?

Answer. I know there was a number of steam-launch engines—I don't know how many. I know there was quite a lot of them, and they were utilized about the ships, but, as I say, how many there were of them I don't know. The other articles I recall.

82. Question. Have you anything to say in regard to the brass, copper, and iron wire, as to the quantity and value?

Answer. Nothing, except there was a great deal of it.

83. Question. Is it your recollection that the quantity stated here is correct?

Answer. I should not consider that excessive.

84. Question. Proceed now to buildings marked No. 8, No. 9, and No. 10. Do you recall those articles?

Answer. Yes; I recall that in building 8 and 9, and also building 10, but, as before, I don't recall amounts.

85. Question. State what you remember in regard to articles in building No. 11.

Answer. I don't remember its being this particular building, but I do recall the fire engine and hose reel, and also hose and fire buckets I recall.

86. Question. Proceed now to building marked No. 13. What do you recall of the articles there?

Answer. I recall a lot of iron rails that were stored, also cement and lime. I know there was rosin there, too, but as to the quantities I don't know.

87. Question. Do you know about the quantities of rails, cement, and lime?

Answer. I know there was a large quantity.

88. Question. Now proceed to building marked No. 14. What is your recollection as to that?

Answer. I know there was a lot of patterns stored. It was called the pattern shop. It was a building in which a lot of patterns were stored.

89. Question. Proceed, please, to building marked No. 15 and state what you remember about the property named there.

Answer. I know there was some tin there. He has some iron here. I know there was a lot of scrap and pig iron, but I don't remember the location of it. There was some charcoal, but how much I don't know. I know there was those articles, but I can't testify as to the quantities.

90. Question. Proceed now to locate building marked No. 16. What do you know about that?

Answer. I know there was a lot of fire brick there. The red brick I don't recall.

91. Question. How about locality No. 17?

Answer. There was a lot of timber at the yard. How much I don't know.

92. Question. Can you give any idea as to the quantity of the timber, by way of an estimate?

Answer. No; because I never looked at it for that at all.

93. Question. State what you know about building No. 18 and the contents, given by Mr. Hall.

Answer. I know there were torpedoes in the storehouse, not as a matter of observation, but it was a matter of discussion at the time.

94. Question. Now proceed to the building marked No. 19 and state your recollection as to that.

Answer. I wouldn't remember as to the location of the lumber. I know there was a lot of lumber there, but as to its particular location I could not tell.

95. Question. You have said that lumber was brought over on the *City of Pekin*, have you not?

Answer. Yes, sir.

96. Question. In your testimony now given, do you mean that this lumber which you have referred to was American or Spanish lumber?

Answer. Spanish lumber.

97. Question. Now proceed to building marked 18½. What knowledge have you of those articles?

Answer. I know there were some gun carriages, but their number or purpose I don't know.

98. Question. Proceed to building marked No. 20; what is your view or recollection on that subject?

Answer. They call those numbers buildings, but a lot of them were not buildings; that is just a classification. These boilers were stored in a lot of places. I recall a lot of old boilers, afterwards used as water tanks, and also two which were in good condition and put in vessels; also the smokestacks.

99. Question. Do you remember those articles in the building named, or generally?

Answer. I don't especially remember the location, but I remember the items generally.

100. Question. Now, building marked No. 21; what is your recollection as to that?

Answer. I know there were a number of boats; also I recall the deck house or pilot house, and there was a great number of carpenter's tools and chests.

101. Question. How about the articles in building No. 22?

Answer. The submarine mines—a number of them—were in what was known as the plating shops, and a number were scattered over various parts of the yard. I also know there was sheet iron or steel in those buildings; I think it was steel. That was in No. 22. That is right. I think there was some heavy plate in addition to the light sheet iron that he speaks of.

102. Question. What is your recollection as to the building marked No. 23, and the property named?

Answer. I know there was a lot of material stored there consigned to various Spanish vessels, but what those things were I don't recall. I recall the chain cables and moorings, also some can buoys and the other things named, except I don't recall the Schwarzkopf torpedoes.

103. Question. Do you recall the other articles given in that list?

Answer. I do.

104. Question. State also in regard to locality marked No. 24.

Answer. I know there were some old marine boilers there.

105. Question. Now, as to locality marked No. 25; how about that?

Answer. I know there was a lot of Rathjen's paint there. This was in great demand, and much of it was carried off to the ships.

106. Question. State what you remember in regard to locality No. 26.

Answer. I recall a lot of propeller blades, anchors, shafts, engines—I recall all those items.

107. Question. Have you any recollection of other articles of Spanish stores not named in this list as at the arsenal?

Answer. Generally speaking, I think the list is exhaustive. I recall some sheet lead and copper sheathing that came under my eyes. I carried off some to the ship myself.

Mr. BINNEY. Does not copper for sheathing come in this list?

The WITNESS. I don't know. If he has got copper for sheathing, that is what it is; but sheet copper and copper for sheathing are not the same things.

108. Question. Do you recall any other articles besides what you have mentioned which are not mentioned here?

Answer. I do not.

109. Question. In giving your testimony in relation to these stores, please state whether you have included in your enumeration any stores of American manufacture.

Answer. I have not, if you mean in going through this list. It might be of American manufacture, but in Spanish possession; but it is most unlikely, because they would not buy anything of American manufacture.

110. Question. Then your intention has been to count only those stores which came into our possession from the Spanish?

Answer. Yes, sir.

111. Question. Can you summarize in a general way your recollection as compared with the statements made by Mr. Hall?

Answer. I think his statement is very complete and concise, so far as I can recall. I should not be able to enumerate them as he had enumerated them, but I recall the articles as I read them from his list.

Mr. KING. I think that is all.

Cross-examination by Mr. BINNEY:

1. Cross-question. None of these stores were in your charge in any way, were they?

Answer. It is just barely possible that when I first landed that I had authority to use the stores from certain of the storehouses for a short time, but I had no disposition of them otherwise.

2. Cross-question. But I mean you were not at any time in charge of any of those stores in the sense in which Mr. Hall was in charge of them?

Answer. No; I was not. I should correct my other statement. You asked about "any of those stores," about having charge of them. Of course, I was in charge of the shops and tool room adjoining the machine shop, and there were things which were immediately available and which I could use without referring to anybody. In the same way there was certain raw material about the yard which I could make available, and I don't think that at times I questioned anybody about it. That was in the early part of my stay ashore; afterwards things assumed a more systematic form and there was some pretense of keeping some record.

3. Cross-question. When you were in charge of the engineering work at the yard, were you fully occupied with that; was there much work to be done?

Answer. Yes, sir; there was a great deal.

4. Cross-question. You didn't interest yourself particularly to inquire as to stores there were, except when you wanted something yourself, did you?

Answer. When I wanted something myself I made a demand on the paymaster for what I wanted, and on some few occasions I would have my men search for them when we didn't know whether they were in the stores or not.

5. Cross-question. Isn't it true that, as regards most of the articles that figure in Mr. Hall's list, you never paid any particular attention to them, to notice them?

Answer. I paid attention to such things as came within my province, and I paid attention to all of them, as did most of the other officers. When we went there we made an inspection of our own accord. I have been through all the storehouses several times, and when I was on duty there I made particular visits to the particular stores that concerned me—the engineering stores particularly.

6. Cross-question. The engineering stores were not by any means the majority of the whole lot, were they?

Answer. The majority in taking up the biggest part of the yard; they were scattered all over the yard; there were a great many of them if you take in all the iron material, and I think that would be justly included in that; and I would include in that, too, the oil and everything of that description.

7. Cross-question. What did Paymaster Smith and Paymaster Ryan have to do with these stores?

Answer. Paymaster Smith was the first one, I believe, who was put in charge, but the first officer who was detailed on shore to my recollection was Paymaster Ryan, and he was in time held responsible for the stores; at all events, nothing could be taken out of the storehouse without his sanction.

8. Cross-question. Now, as to those boiler tubes in building No. 4, have you any personal recollection of your own that would enable you to say there was as much as $35,400 worth of such tubes?

Answer. I have never made up an estimate of that at all. I know there was a lot of tubes there, both iron and brass—as to the quantity I could not testify.

9. Cross-question. You would not be able to say, then, whether there was $35,400 worth or $17,700 worth?

Answer. That I could not tell.

10. Cross-question. Have you any idea whether any of the shells were used by the United States Navy?

Answer. Do you mean by our original ships or by ships subsequently?

11. Cross-question. I mean by ships subsequently.

Answer. Yes, sir; I know the *Manila* used some in some of her guns; I know they were taken on board for that purpose.

12. Cross-question. What did you use sheet lead for?

Answer. What did we use it for on board the ship?

13. Cross-question. What did you use it for in the work which you were doing at the time you referred to; what were you using sheet lead for?

Answer. I don't recollect using any myself?

14. Cross-question. Did you use any of this sheet lead which you say was here yourself, or not?

Answer. I recall using some on board ship—that is, I recall taking some on board ship for the ship's use; but beyond this I don't recall using it.

15. Cross-question. How much did you take on board for the ship's use?

Answer. One roll; it was rolled up in large rolls.

16. Cross-question. What would be the value of a quantity like that?

Answer. I don't know; I don't know what lead is worth now; it would be something above the market value because it was over there; just what the market value was I don't know.

17. Cross-question. And you also used some copper sheathing, did you?

Answer. Copper sheathing? No.

18. Cross-question. How did you happen to remember that there was copper sheathing there?

Answer. I saw that before I went on shore—that is, before I went on shore for permanent duty; and the same way with the lead.

19. Cross-question. As to these rails in the building marked No. 13; were those iron or steel rails?

Answer. Why, I don't know whether they were iron or steel; they were ordinary railroad rails; whether iron or steel I don't know; if gotten recently at all, they would be steel, because they don't make iron rails now.

20. Cross-question. Their value, as estimated by Mr. Hall, is $60 a ton?

Answer. Yes, sir.

21. Cross-question. Isn't that rather high as prices ran in the summer of 1898?

Answer. I don't recall; I know we paid much for all the material we used at that time, and we paid enormous prices.

22. Cross-question. Have you any knowledge as to the price which was paid for those Schwarzkopf torpedoes?

Answer. No, I have not.

23. Cross-question. Can you give any general idea as to what proportion of these stores referred to in this list was actually taken away from the naval arsenal at Cavite for the purpose of use by the United States forces before the date of the exchange or ratification of the Spanish treaty—which was, I think, about the middle of February, 1899?

Answer. I couldn't possibly tell.

24. Cross-question. Could you say that one-fiftieth part had been taken?

Answer. It would be pure guess; I would not care to say.

25. Cross-question. Can you say whether the quantity taken was a large or a small portion of the whole lot?

Answer. I should say it was a very small portion.

Mr. BINNEY. That is all.

Redirect examination by Mr. KING:

1. Redirect question. What was the nature of the work which was going on in the arsenal, and in the ship, both, which would require the use of these stores from time to time?

Answer. The navy-yard at Cavite; the same functions were performed there as at the navy-yard in this country. The purpose was to keep the ships in repair. We were supplying a lot of material to the ships, a great deal of it in the rough and some of it finished, to take the place of defective machinery on board ship. We also did considerable work on the small boats, which included boats taken from the Spanish, and in such cases other work was required as well as the work on machinery.

2. Redirect question. How large a force of men did you have at work?

Answer. In the neighborhood of 400 at one time, I think, was the largest I had; I think it was about 370.

3. Redirect question. What would it average during the period, do you think?

Answer. I should say somewhere about 250—that is, my own individual force; and in addition to that the carpenter had a large force.

4. Redirect question. Who was the carpenter?

Answer. Mr. Harding.

5. Redirect question. Is he in the Navy?

Answer. He is.

6. Redirect question. Do you know how many men he employed?

Answer. He had a large number; how many I don't know.

7. Redirect question. Were all these men using material right along?

Answer. Why, yes; sometimes it would be a case of fixing machinery which didn't require materials, but generally it is the practice there, the same as in any other machine shop—there might be something which would require material. New material was being used all the time in some way, of course.

8. Redirect question. Would it be possible by the number of men at work to approximate the value of material that they would use up?

Answer. No; I should not want to undertake to say.

Mr. KING. That is all, I think.

GUSTAV KAEMMERLING.

Deposition of Horace W. Jones, on behalf of libellant, taken at New Bedford, Mass., June 26, 1900.

Be it remembered that on the 26th day of June, 1900, I, Walter Clifford, United States commissioner for the district of Massachusetts, did call and cause to be personally before me at my office in the city of New Bedford, in said county and State, Horace W. Jones, to testify on behalf of the libellant in the cause aforesaid. And the said Horace W. Jones, being duly sworn, did thereupon testify as follows, being examined by William B. King, esq., for the libellant:

Question. State you name, age, and occupation?

Answer. Horace Walker Jones; 39 years old; lieutenant, United States Navy.

Question. What is your present station?

Answer. New Bedford, Mass., on the U. S. S. *Amphitrite*.

Question. How long have you been in the United States Navy?

Answer. Since 1880, with the exception of three years.

Question. And during that time what has been your rank at different times?

Answer. On my first entering into the service I was cadet engineer; then changed to naval cadet; then for three years in civil life; then became an assistant engineer; was given the rank of passed assistant engineer which I held until March, 1899, when I became lieutenant of the line by act of Congress.

Question. Where were you stationed, and on what duty, and on what vessel on the 1st of May, 1898?

Answer. I was a passed assistant engineer on the U. S. S. *Concord*, and on the 1st of May was in Manila Bay, Philippine Islands.

Question. How long did you remain in that vicinity?

Answer. As well as I can remember it was about eighteen months—sixteen months after the 1st of May.

Question. And how soon after the 1st of May did you go ashore at the Cavite arsenal or navy yard?

Answer. I think it was about two weeks.

Question. What was your purpose on shore at that time, and how long did you stay?

Answer. I went purely as a matter of curiosity and stayed about two or three hours.

Question. What did you do while there?

Answer. I walked through the yard and the storehouses—a portion of the storehouses—to get a general idea of what the place looked like.

Question. When next did you go ashore at Cavite yard?

Answer. I do not remember the exact date, but I kept going on visits for about four months; going, say, once a week, or once every two weeks,

at intervals, until some time in September, when I was ordered to the navy-yard in charge of the engineering branch—in charge of the shops that are there.

Question. Whom did you succeed in that work?

Answer. I succeeded Chief Engineer R. T. Hall of the *Petrel*.

Question. Who was commandant of the yard when you were engineer

Answer. Commander Asa Walker of the *Concord*.

Question. You have spoken of several visits that you made on shore before you were ordered to duty there. What was the object of those visits?

Answer. Purely to get a run ashore and for curiosity's sake.

Question. What did you do when on shore at those different times?

Answer. I wandered through the navy-yard and also through the towns of Cavite and San Roque.

Question. Had you, up to the time when you went on shore on duty, any necessity for observing the routine of the yard in regard to the withdrawal of stores for official purposes?

Answer. We had some work done in the engineer's department of the *Concord*—some minor work—and in Mr. Hall's office I noticed that he wrote out slips to send to the storehouse to get stores from there. I don't know that there was any official list of the stores, but he knew in which house they were, and he would send his manager around with these slips to draw them from the people who were in the storehouses at that time—Filipinos who were in the storehouses.

Question. Do you know what became of those slips?

Answer. I do not, sir.

Question. After you went on duty as engineering officer, what was the rule with regard to the withdrawal of stores?

Answer. Passed Assistant Paymaster Ryan was put in charge of the stores at the same time that I was sent ashore. He and his clerk had charge of the stores, and while I was there I sent down slips and the stores were issued by them—by the paymaster and his clerk.

Question. What was the name of the clerk?

Answer. F. K. Hunt, paymaster's clerk. As far as I can remember, the slips were filed on the desk, but what finally became of them I don't know.

Question. Were those slips approved or countersigned by the commandant?

Answer. Not at the time that I was there, sir. I wrote them in pencil on ordinary scribbling block and signed them with either my name or initials, and on the authority of those slips the stores were issued.

Question. How long did you stay there on shore as engineering officer?

Answer. I don't remember the exact dates, but as well as I can remember, it was about three weeks.

Question. Who then succeeded you?

Answer. Passed Assistant Engineer Gustav Kaemmerling of the *Olympia*.

Question. After he took charge, had you any experience in withdrawing stores for official use?

Answer. I remained with him about three days in order that he might get used to the routine that was being carried on at that time, and during that time the stores were issued as they had been when I was in charge.

After that time I think that the countersign of the commandant was required. In fact, I am certain of it, because when I went over to get work done afterwards it required the commandant's signature.

Question. What was the origin of the stores on hand up to the date when you left the shore duty as engineer?

Answer. The stores on hand were old Spanish stores, being stored in different buildings in the yard, and stores of all sorts, until the arrival of the *Pekin*, an army transport. She brought over a small amount of engineering stores.

Question. When did she arrive?

Answer. As well as I can remember, some time in July; the early part of July. She was the first ship that arrived, the first ship with troops.

Question. Please state as well as you can what the engineering stores were that she brought over.

Answer. As well as I can remember, the stores that were brought over were copper pipe of various sizes; valves, also of various sizes; some metal, bar and sheet metal, and packing and hose. I remember those. I don't remember anything else. The amount that she brought was not large.

Question. How did it compare in amount with the amount on hand of Spanish stores?

Answer. It was a very small amount as compared with those, sir. The stores that she brought over occupied only a small portion of the floor and shelving of one store, while the Spanish stores were in all stores in the yard.

Question. Did you while you were there make any inventory of the Spanish stores in the yard?

Answer. I did not.

Question. Do you know of any inventory being made by anybody about that time?

Answer. I do not know of any inventory being made, but I saw them rearranging the stores while I was in the yard.

Question. What was the nature of that rearranging?

Answer. Classifying. Placing material of the same kind in the same storehouse.

Question. Who did that?

Answer. Paymaster Ryan and his clerk, with a force of Filipino workmen that they had.

Question. Did that involve any extensive changes?

Answer. No, not extensive changes. It was merely the moving from one storehouse to another. The changes were extensive in this way—that the stores were moved to different storehouses from the ones in which they were under the Spanish régime. The Spaniards had metal and things of that sort scattered about in the yard in various places, and the storehouses were taken—one of them was taken for a hospital, another was taken for army commissary store, and all the stores were moved out of those and moved into other storehouses in the yard. They tried to get all the metals in one place as nearly as they could, and all of the brass into another, and all of the small stores into another, so that I should say the changes were extensive to that extent.

Question. Could you state how many men you had employed in the engineering department while you were in charge?

Answer. Between 170 and 180.

Question. Do you remember whether that was more than before you were in charge?

Answer. It was a few more than Mr. Hall had, as well as I can remember, and less than Mr. Kaemmerling had. His number ran over 200.

Question. Does that include the men engaged in the carpentering work?

Answer. No, sir.

Question. Do you know how many there were in the carpentering force?

Answer. No; I do not. The pay roll was about $800 for one week, as I remember, while I was there—the payment of the entire force of the yard—but I do not remember the number in the carpenter's department.

Question. Who was in charge of the carpenter's department there?

Answer. I can not tell without referring to the navy list.

Question. Was it Harding?

Answer. Harding; that is the man's name—yes, sir. He was there the whole time that I was. He was practically in charge of all work in construction and repairs, we call it in the naval service, and Lieutenant McDonald, who was the assistant of the captain of the yard to the commandant, had charge of the work. Mr. Harding was under him—Lieut. J. D. McDonald.

Question. Who was your chief assistant or foreman?

Answer. A Filipino whose name I have forgotten. I had no American assistants at all. I had no interpreter and had no American machinist to help me.

Question. Have you since you were engaged on duty there made any list or inventory of the stores in those buildings—the Spanish stores particularly?

Answer. No, sir.

Question. I hand you the paper already placed in evidence in this case, being a memorandum of stores in the Cavite naval station when the plant was started, May, 1898, annexed to the deposition of Lieutenant-Commander Hall, and would ask you if you have examined that list?

Answer. Yes, sir; I have.

Question. Will you please look over this memorandum, and, beginning with the building marked No. 1, state whether you remember any or all of the articles contained on that?

Answer. In the building marked No. 1 I remember articles as listed, all except portable forges, coal and ash buckets, breakers and scuttle butts, two blast blowers. I do not remember those as being in the actual building put down here—I remember them as being in the yard. These various things that I have marked here as having remembered I remember as having been in the yard, but I can not identify them as having been in the buildings that are specified here, because some of the stores were changed around—had been changed around.

Question. Will you please state if you know anything in regard to the quantities or the values of these separate stores enumerated here which you remember?

Answer. I don't remember the quantities, and consequently I can not estimate the lump value. I have only a general idea of the quantities that were in the yard.

Question. Can you as to any of the particular items give any quantities or values?

Answer. Two ship's galleys I remember in the yard, and the value, $150, I think is a fair value for them.

Question. Please make a similar statement in regard to the articles in the memorandum under the heading of the second floor.

Answer. I don't remember handspikes, capstan bars, plumbers' tools and supplies, and the sections of suction hose, cork and hemp fenders, shackles, fog siren machine. I don't know the quantities or the value of those stores.

Question. Do you remember the other articles there named that you have not enumerated?

Answer. I remember them in the yard; yes, sir.

Question. Can you state anything in particular in regard to the medical stores inventoried there?

Answer. Two large cases of medical stores, I remember those perfectly. I did not notice them in reading over. I should say that the value, $100, was decidedly under from the general knowledge that I have of the cost of medical stores and apparatus. There were a large number of splints and of chemical apparatus and of surgical apparatus in these cases. I think $100 is entirely too small an amount as a valuation for those.

Question. Can you put any estimate on them?

Answer. I think $500 would be nearer the amount, although that must be guesswork on my part, sir, as I have never had to deal in medical supplies.

Question. Proceeding now to building No. 2, state in regard to the articles contained in the inventory in that building.

Answer. I don't remember the tallow, the varnish, or the rosin. The other things I will have to make the same statement, that I do not remember the quantities nor the valuation of them.

Question. Do you remember that there were such articles?

Answer. I do remember that there were such articles except those that I have enumerated as not remembering.

Question. Proceeding now to building marked No. 3, do you remember the lot of miscellaneous junk inventoried there?

Answer. I don't, sir.

Question. In building No. 4, please state what you remember and what you do not remember.

Answer. I do not remember 1 ton of tin, and pigs and sheets, 1,000 pounds in pigs, 1 searchlight and pedestal in that building, I do not remember.

Question. Can you make any particular statement in regard to the quantities or values of any of the other articles inventoried in that building?

Answer. One Belleville steam boiler I remember seeing. It was just outside of the building, not in the building. It had been moved outside. It was a complete boiler, new, for one of the craft there, I do not know which one, and I should say $4,000 would be a fair price for that.

Question. What can you say in regard to the quantities of iron and steel?

Answer. Well, the total amount of iron and steel shapes and sheets in the whole yard, which is the only way that I can remember it, seems to me to have been more than 250 tons. That is the amount that is stated here in this one building. But I remember seeing in other places here the tons of sheet steel. I should think that 500 tons of the metal in all would be about the amount as I remember having seen in the yard, exclusive of railroad iron.

Question. Please say exactly what you mean there by the words "of the metal in all."

Answer. I mean of the sheet metal and shapes, as we call them, that could be worked up. I do not mean scrap metal or anything of that sort, but new metal.

Question. Do you mean iron and steel alone, or all metals?

Answer. I mean iron and steel sheets and shapes. I do not mean any other metal or scrap metal.

Question. Can you state anything in particular in regard to the shells?

Answer. I remember seeing shells of various sizes and a number in this building at first that were boxed—new shell boxed and fused. I do not know the size of the shell except that I saw numbers of 4.7 inch which is not stated here, and I also remember seeing a number of 6-pounder fixed ammunition.

Question. You say that you do not remember pig tin?

Answer. No, sir; I do not remember seeing the pig tin in any particular building, but I did use pig tin and copper and lead and some zinc in the foundry when I was in charge in making castings, composition castings, and those metals were drawn from the stores and from the old Spanish stock. It so happens that I do not remember seeing them.

Question. Do you remember whether there was any sheet lead or sheet copper among the Spanish stores?

Answer. No, sir.

Question. What can you state in regard to the property stated to be on the second floor of that same building?

Answer. I remember seeing parts of all of this miscellaneous stock spoken of, but I have no idea of the quantity.

Question. Proceeding now to the building marked No. 5, state what you know in regard to the articles there inventoried.

Answer. I do not remember the 400 sheets of galvanized iron, 3 heavy hemp hawsers, or the ton of zinc, or the 1,000 pounds of sheet zinc. I do remember 1 breech-loading rifle, unmounted, but as to its value I do not know what the value of that is. I haven't looked it up.

Question. Do you remember the other articles?

Answer. I remember seeing the other articles, but do not remember the quantities or the price.

Question. Proceeding now to building marked No. 6, state what you remember in regard to the articles there inventoried.

Answer. I remember that there were such articles in that building, sir, all as enumerated there. The quantities I can not identify.

Question. State also as to building marked No. 7.

Answer. I remember all of the articles as marked in that building on the first floor. I particularly remember the two crank shafts, two propeller shafts, and I also remember the one lot of miscellaneous gear. The other things I can not identify as to quantity nor price.

Question. In this inventory there are 5 steam-launch engines complete in building No. 6, and 16 steam-launch engines in building No. 7. Can you state anything in particular as to the number of steam-launch engines?

Answer. No, sir; I can not. The steam-launch engines had been used and shifted around before I came to the shops. There were a number in each one of those buildings, and at that time we were working on them, getting them ready to put into use. I do not remember how many there were there at the time that I had charge; I didn't count them, but we were working on three or four of them at the time, and there were others that were not being worked on that were in the two buildings.

Question. Do you recall any articles in buildings Nos. 6 and 7 which are not contained in this inventory?

Answer. I don't see any of the small machines put down—the lathes, drills, or machinist tools.

Question. Were these buildings spoken of as machine shops in the inventory fitted up with large machinery?

Answer. Some of the machinery was large and some small. In building marked No. 6 here, machine shop, first floor, nearly all of the machinery was small—small lathes and shapers, and drill presses. The building marked No. 7, first floor, the machinery was large with the exception of three pieces—2 lathes and a milling machine.

Question. Can you give any idea as to the value of that small machinery in buildings 6 and 7? I mean by the small machinery that which was not attached to the buildings or to the ground.

Answer. I would have to go over the machinery and try to pick out the small from the large in order to do that, and value each machine separately. The small machines I should estimate at about $2,000, sir.

Question. What would you, in a general way, consider to be the value of the large machines?

Answer. The large machines and the shafting, everything combined together—that is, the fitting out of the shop—I should take to be about $50,000. In that I consider the engine and boilers and all of the shafting and belting, and all machinery in the shop.

Question. Proceeding now to building No. 8, please state whether you remember the stock iron referred to there.

Answer. I remember that there was stock iron in the building of various sizes and shapes.

Question. Did you include that in your original estimate of the total quantity of iron and steel?

Answer. Yes; I should take that in.

Question. Do you remember any other articles in that building?

Answer. There were blacksmith's tools that are not mentioned in this memorandum, such as anvils, hammers, sledges, and all of the various tools that a blacksmith works with.

Question. What would be your estimate of the value of those tools—tools and anvils?

Answer. The whole combined I should think would be about $1,500.

Question. In building marked No. 9, have you any knowledge of the boiler covering plaster referred to there?

Answer. I remember the boiler covering as being in the yard. I do

not remember whether it was in the building No. 9 or not. I had occasion to use parts of it.

Question. In the building marked No. 10, state what you know of the articles there inventoried.

Answer. I remember everything. I remember the items in that building. The ship's galleys that I see there are the ones that I have already spoken of as being in the yard.

Question. State what you remember in regard to the articles inventoried in building No. 11.

Answer. I do not remember those at all. I don't think I was ever in the house.

Question. What is your recollection in regard to the articles marked in the building No. 13?

Answer. I remember everything except the rosin. I don't remember as to the quantities nor the values.

Question. Building No. 14, what have you to say?

Answer. I remember the miscellaneous lot of patterns in that building.

Question. Could you give any estimate of what their approximate value would be?

Answer. The value of the patterns in that store would depend entirely upon what ships they were intended for. We were using the patterns all the time for stock work, but there were a number of patterns that belonged to special ships, and would only be fitted up for those, and it would be very hard to put any valuation on the total lot.

Question. Building No. 15, what is your recollection?

Answer. I do not remember the tin in pigs, nor the copper in pigs, nor the zinc in pigs. I do remember the other articles there except as to quantities.

Question. Do you know whether there was pig copper, tin, and zinc in the yard?

Answer. There was, sir, because I used it. It was issued from the store.

Question. Do you remember anything about the fire brick and red bricks marked in locality No. 16?

Answer. No, sir; I do not.

Question. Do you know anything about the timber in the locality marked 17?

Answer. I don't remember it in that locality. I remember the timber in the yard. I mean I don't remember exactly where the locality was, but I remember a number of heavy sticks of timber that were piled in the yard. That timber was all collected together and put as nearly in one place as possible.

Question. There is also lumber referred to as stored in building marked 19.

Answer. Yes, sir; I remember the lumber in building marked 19.

Question. Have you any idea as to the number of feet of timber and lumber?

Answer. I made no estimate of it. There was a large amount of timber in the yard, but I have no idea of the exact amount.

Question. What do you recall as to the articles inventoried in the building marked No. 18?

Answer. In the building marked 18 I do not remember one submarine mine.

Question. Do you remember the Schwarzkopf torpedoes?

Answer. I do remember the Schwarzkopf torpedoes.

Question. Proceeding now to building marked 18½, what recollection have you as to those articles?

Answer. I do not remember those, sir.

Question. As to building marked No. 20 what have you to say?

Answer. I remember the articles there.

Question. Can you state anything as to the numbers or values?

Answer. I can not, sir.

Question. In the building marked 21 what have you to say?

Answer. I remember the items put down, and I remember particularly the new deck house, the valuation of which, $400, is, I think, about correct.

Question. Do you recall the articles in building marked 22?

Answer. No, sir; I do not.

Question. Do you recall the articles inventoried in the building marked No. 23?

Answer. I do except four Schwarzkopf torpedoes. I do not know the amounts or the total valuation of them.

Question. As to the locality marked No. 24, a marine boiler is stated to be there. Have you any recollection of that?

Answer. I have, sir.

Question. What do you remember about that?

Answer. I remember that there were three boilers there. One of them was used in one of the large launches. I examined another one to see what condition it was in, and found that with slight repairs it might be used, and I am under the impression that after I left there it was used. The other one I had no occasion to examine with any idea of using it.

Question. State what you know in regard to the Hull paint in the locality marked 25.

Answer. I remember seeing a quantity of Hull paint in the yard. I do not remember the amount of it that was left there after the ships had taken it from the yard.

Question. Proceeding now to the lot near building marked No. 1, locality marked No. 26, what can you state in regard to that?

Answer. I remember the articles there, but I can not give the exact quantities nor the valuation.

Question. In testifying throughout in regard to the articles in this list have you included any articles brought on the transports from America or purchased by the American forces?

Answer. No, sir.

Question. What class of property does your testimony relate to then?

Answer. To property that was left in the yard by the Spaniards when they evacuated the place.

Question. And besides the articles which you have mentioned during the examination, can you recall any other articles not mentioned in this list of the same origin?

Answer. The articles not mentioned on the list would include machinery and tools in various shops, railroad cars and scrap iron, and a number of

foundry tools that were not mentioned—what we call copes and drags—that have value, and were stored in the yard, and were used by me in making large castings. They are made in a box that has two parts. The top of this box in which the sand is put is called a cope and the bottom of the box is called a drag. The pattern is put in this box and sand is hammered around it.

Question. What would you estimate the value of those copes and drags?

Answer. I should say about $2,000 worth of them, sir.

Question. And what the value of the foundry tools that you referred to?

Answer. In making an estimate of the foundry tools I have to take into account the fixtures, and have taken into account the fixtures, but the parts that are not fixtures, I should say that the foundry tools were worth about $500.

Question. Will you please state what experience you have had in the course of your official duties in fixing the values of articles such as those to which you have testified already?

Answer. As chief engineer of various ships and as an engineer stationed in naval stations, I have been on a number of boards of survey and appraisal, and have also had to appraise articles which are required for use in the various ships; also in civil life for three years I was selling just such articles as we use in the engineer's department on board ship.

Cross-examination by CHARLES C. BINNEY, Esq., for the United States:

Question. You have said that you were three years in civil life. With what firm or firms were you connected?

Answer. The firm of Robinson & Carey, St. Paul, Minn.

Question. In what business?

Answer. In railway and mill supplies.

Question. What position did you hold?

Answer. The position of assistant to the city clerk in charge of the railway supply business.

Question. What sort of supplies did you deal in that were of the same kind that they use in the Navy?

Answer. The same general class, exactly, sir. Mill supplies, taking into account engine supplies, such as valves, packing, pipe, metals, tools of various sorts—all supplies needed around engines and boilers. I also sold the supplies to mills of various sorts, foundries and machine shops, and sold the tools to machine shops. It was just exactly like a large naval storehouse.

Question. How often have you served on boards of appraisal in regard to property at naval stations?

Answer. Well, the only naval station that I have served on shore has been at the Naval Academy. I do not happen to remember the number of appraisal boards that I have been on. They have never been for large quantities of materials, only for small quantities.

Question. There is not much construction or repair that takes place at the Naval Academy, is there?

Answer. No, sir.

Question. During the three weeks that you were on duty at the Cavite naval station, to what extent did you have charge of the stores and supplies there?

Answer. I did not have charge of them at all. The stores were issued on my requisition, but I had no charge of them. Paymaster Ryan was placed in charge of the stores, coming over from the ship from which I came with Captain Walker.

Question. Then you did not have the same duties in regard to the stores as Mr. Hall had had?

Answer. Well, as I remember, Mr. Hall had charge entirely of the stores; the paymaster only paid the pay roll. The paymaster from his ship had no charge of the stores at all.

Question. Then it was not a part of your duty to acquaint yourself with the kinds or quantities or location of the stores there?

Answer. A part of my duty to acquaint myself with certain kinds of stores and quantities, to know that I had up to a certain amount in order to make castings and things of that sort, to do certain work. I could not take work to do unless I knew that I had the material to do it with.

Question. That statement relates to the engineering stores, I presume?

Answer. Yes, sir.

Question. And except as to the stores and supplies required for the engineering work which you had in hand, it was not a part of your duty to ascertain what stores were there, or in what quantities, or where their location was?

Answer. No, sir.

Question. And when you were in charge of the engineering work your time was pretty well occupied with your work, was it not?

Answer. Yes, sir; but very often I had to look for stores. I spent a good deal of time in the buildings. The Filipino workmen whom I had knew nothing of the location of the stores at all, and with Mr. Hall's assistance at first, and then by my own efforts, I learned where to send them for these various stores. I hadn't anything like the opportunity that Mr. Hall had to find out either the quantities or the disposition of the stores, and in many cases their disposition had been changed from what they were on the 1st of May.

Question. You stated that you did not remember certain items on Mr. Hall's list—as portable forges, breakers, scuttle butts, blast blowers, and coal and ash buckets?

Answer. Yes, sir.

Question. Do I understand that in those and other instances where you have said you do not remember the articles, that you do not remember about them at all?

Answer. That I do not remember having seen them, sir.

Question. In any part of the yard?

Answer. No, sir.

Question. In the list of articles in building No. 1, two ship's galleys, at $75 apiece, and in the list of articles in building No. 10, two large ship's galleys, $1,000 apiece; you say that you remember two ship's galleys?

Answer. Yes, sir.

Question. Now, from the best of your recollection, what would be the value of the ship's galleys, as you remember?

Answer. About $75 apiece, sir. They were small cast-iron galleys.

Question. Then you were in error in stating in regard to the articles in building No. 10? Were the ship's galleys that you remember—were those listed as in that building?

Answer. No, sir; the ones that I remember were in that building—building No. 10.

Answer. No, sir.

Question. And you do not remember seeing any large ship's galleys that would be worth that price?

Answer. No, sir, I do not. I fitted up one of the smaller ones (smaller galleys), so that I happen to remember those perfectly. But, as I said before, the disposition of these things was totally different when I came to the yard.

Question. Are not portable forges generally included as blacksmiths' tools?

Answer. No, sir. They are listed as blacksmith's tools, but they may be used for ship work as well.

Question. When you spoke of blacksmiths' tools which you said were not included in the list of articles in buildings Nos. 6 and 7, did you have in mind any portable forges among those blacksmiths' tools?

Answer. No, sir, they had none in that shop. They were all fixed forges.

Question. What are fire tools?

Answer. Fire tools are the tools with which the marine boilers and other boilers are worked, such as hose, slice bars, devil's claws, pricker bars.

Question. You stated that you never had to deal in medical stores and apparatus, but from your general knowledge of the cost of medical stores and apparatus you think that there was as much as $500 worth in the Cavite naval station. What general knowledge in such matters have you had?

Answer. Only in buying for my own use or other people's use surgical and other medical supplies.

Question. Did you ever buy as much as $500 worth?

Answer. No, sir.

Question. That figure of $500 is a mere guess on your part?

Answer. A mere guess.

Question. But you think there was rather a quantity of such stores there?

Answer. I think there was a large quantity of them, sir. Two large glass cases that were built into the room, octagonal or hexagonal cases that stood in the center of the room, were filled with various surgical supplies.

Question. How large were those cases?

Answer. I should say about 6 feet in diameter and about 12 feet high.

Question. You have stated that there were about 500 tons of iron and steel in shapes and sheets?

Answer. Yes, sir.

Question. There might have been less than that quantity, might there not?

Answer. Yes, sir; that is an estimate without any measurements having been taken.

Question. Did you include anything that would be called scrap iron in your estimate?

Answer. In that estimate?

Question. Yes.

Answer. No, sir.

Question. You have noticed, have you not, that iron and steel in shapes and sheets are mentioned in various parts of this list of Mr. Hall's besides those quantities of them that are referred to as being in building No. 4, which was the building that you had under consideration at the time you made that statement?

Answer. Yes, sir.

Question. Do you mean then that Mr. Hall's list taken altogether does not cover the quantity of iron and steel in shapes and sheets that was there?

Answer. I have not added his list up, sir, to see. I have a general idea of the metal that I saw in the yard, and estimated it here—I have made no other estimate of it before—as being about 500 tons.

Question. You stated that you did not remember about any sheet copper. Do you remember about any copper sheathing?

Answer. No, sir.

Question. In this list there is noted among the contents of building No. 4 $35,400 worth of boiler tubes, iron and brass, assorted sizes. Would you be able to say whether there was $35,400 worth of such property there?

Answer. I am not able to say, sir, because I made no measurements of the tubes, but there were a very large number of boiler tubes, both brass and iron, in various buildings in the yard. I could not estimate the value of them without knowing the number of feet or pounds.

Question. Half that value of boiler tubes would take up considerable space, wouldn't it?

Answer. It would take up considerable space. As to the number of boiler tubes I can not say anything about it, but as to the value of them I should say that there were more than $17,000 worth there, from my remembrance of the space that they did take up.

Question. Are you certain that the small machines, lathes, drills, machinists' tools, which you say were in the buildings Nos. 6 and 7 are not included in any part of this list?

Answer. I have not seen them in the list anywhere, sir. I read it over carefully.

Question. The large machines that you say were there were built into the buildings, I suppose, were they not, in the nature of fixtures?

Answer. No; they were set just as the other machines were, except that one was larger than the other. A foundation is built—a heavier foundation is built for them than for the others. Some of the small machines are only set upon the ground and pegged there.

Question. The large machines were not portable property in the ordinary sense of the term?

Answer. I think they were, sir; because they are kept in store in storehouses, and are shipped in cars to those that need them. They are portable to that extent.

Question. They are property which are only used on land; is not that the case?

Answer. Yes, sir; the large machines are only used on land. We did use on the *Vulcan* quite large lathes, larger than any I have listed here as being portable.

Question. But do you remember that these small machines—lathes and drills and machinists' tools that you have referred to—were such as are used on shipboard?

Answer. Yes, sir.

Question. You have spoken of foundry tools as not being included in Mr. Hall's list. Are those foundry tools among the tools which you had in mind as being in buildings Nos. 6 and 7?

Answer. No, sir; foundry tools are totally different from those used in the machine shop.

Question. In what building were they?

Answer. In the foundry. I can pick it out on the drawing. Building marked No. 15 here—No. 15.

Question. You estimated the small machines in buildings Nos. 6 and 7 at $2,000 worth. How did you reach that conclusion?

Answer. I picked out as many as I could actually remember and by their size gave them values, such values as I remember to have seen them sold for in this country. There is one lathe at $400, three lathes at $200 apiece, one drill press at $200, and two grindstones at $50 apiece, one milling machine at $200, two lathes at $75 apiece, and one drill press at $200. I think that adds up about $1,800; $2,000 was what I put it.

Question. How do you make up the $2,000 worth of copes and drags?

Answer. There were a large number of iron copes and drags, quite large ones, that are expensive to make. There are also a large number of wooden ones. My valuation of the pile, as I remember them in front of the foundry, would be about a couple of thousand dollars.

Question. You say some of these patterns for ship's machinery in the building No. 14 were for special ships. Some of those ships had been destroyed in the battle, had they not?

Answer. I do not know whether they had, sir, or not.

Question. And you don't know how much of the $4,000 worth of patterns were for special ships, do you?

Answer. No, sir; I know that they were for special ships because I could tell by their shapes. They were not the stock shapes, not the stock material, but were for special machinery.

Question. Do you know what the usual price of Schwarzkopf torpedoes is?

Answer. No, sir; the price varies with the size.

Question. Do you know what the price of any size is?

Answer. I do not know, but I have heard that the torpedo is about $2,000 each. I should say the Whitehead torpedo; I don't know anything about the Schwarzkopf.

Question. Were those rails in building 13 iron or steel rails?

Answer. I do not know, sir.

Question. Do you know what was the current price of steel rails in the summer of 1898?

Answer. I do not, sir.

Question. Do you know what was the current price of steel rails at any recent date?

Answer. I saw it stated the other day.

Question. I mean before this time.

Answer. No, sir; I do not.

Question. In regard to prices generally, your only knowledge as to prices of articles on this list relates to such as you dealt in during those three years, does it not?

Answer. Yes, sir; prices in this country.

Question. And as to the quantities mentioned in this list you never took any particular pains to ascertain the precise quantities of any of these things, did you?

Answer. No, sir.

Question. Can you give any idea of the amount of property which had been taken from the Spaniards which remained in the naval station at the date of the exchange of ratifications of the Spanish treaty, that is, April 11, 1899?

Answer. I have no method of telling, sir.

Question. Is it not a fact that the property which had been removed from the yard for the use of the forces of the United States before April 11, 1899, was very small in comparison with that which still remained there at that date?

Answer. Yes, sir.

Redirect examination:

Question. What proportion of these Spanish stores would you suppose would have been used up during the practically one year elapsing up to April 11, 1899?

Answer. That is a question I can not answer, sir. I have no basis upon which to go. There was a continual outflow of the stores in small quantities, being used in repairs to the various ships, but as to the amount of raw material used up I have no idea.

HORACE W. JONES.

STATE OF MASSACHUSETTS,
County of Bristol.

I, Walter Clifford, United States commissioner in and for the district of Massachusetts, do hereby certify that on the 26th day of June, 1900, I was attended by William B. King, esq., of counsel for the libellant, and by Charles C. Binney, esq., of counsel for the United States, and by the witness, who was of sound mind and lawful age, and the witness was by me first carefully sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition made by him was reduced to writing by me from his statement, and he, after carefully reading the same, subscribed the same.

And I do further certify that it is stipulated and agreed by counsel that all informalities in regard to notice are waived, and that this deposition is taken by consent of parties.

And I do further certify that I am not of counsel or attorney for either of the parties in this cause, or in any way interested in the event of the cause.

In testimony whereof I have hereunto set my hand this 26th day of June, 1900.

WALTER CLIFFORD,
United States Commissioner.

Deposition of Washington L. Capps, on behalf of libellant, taken at Washington, D. C., July 27, 1900.

Appearances: George A. King, esq., William B. King, esq., and Benjamin Micou, esq., for the libellant; Charles C. Binney, esq., for the United States.

DISTRICT OF COLUMBIA,
County of Washington, ss:

On the 27th day of July, in the year 1900, personally appeared before me, a notary public in and for the District of Columbia, at No. 728 Seventeenth street, Washington, D. C., Washington L. Capps, a witness on behalf of the libellant in a certain suit or matter of controversy now pending and undetermined in the supreme court of the District of Columbia, wherein George Dewey, as Admiral of the United States Navy, on behalf of himself and others, is libellant against the ship *Don Juan de Austria* and others.

And the said Washington Lee Capps, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, did thereupon depose and say as follows, viz:

WASHINGTON LEE CAPPS, being duly sworn and examined as a witness for the libellant, testifies:

By Mr. WILLIAM B. KING:

1. Question. What is your name, age, occupation, and residence?

Answer. Washington Lee Caps; 36 years of age; reside at present at Washington, D. C., and am a naval officer.

2. Question. Please state your rank and present station, and how long you have been in the Navy.

Answer. Am a naval constructor, rank of commander, and have been in the Navy for twenty years.

3. Question. Have you any interest in the claims for prize money arising out of the engagement at Manila Bay?

Answer. None.

4. Question. Will you please state in a general way what your experience has been in the construction and repair of vessels, especially of naval vessels?

Answer. I have been a member of the construction corps of the Navy for the last twelve years engaged in various duties, in charge of the work of construction of battleships and cruisers and on duty at navy-yards and on various boards of the Navy, and at present am a member of the inspection board.

5. Question. Can you state any particular duty or any particular vessel that you have been engaged on at different times on which you have had experience in the line of your profession?

Answer. The *Oregon*, the *Wheeling*, the *Marietta*, the *Farragut*, the *Wisconsin*, the *Baltimore*, the *Philadelphia*, the *Cincinnati*, the *Maine*, and others.

6. Question. What duty in general did you perform in relation to these vessels?

Answer. With the *Oregon*, the *Wheeling*, and *Marietta* I was in entire charge of the work of construction. While on duty at the navy-yard I was second in charge of the work of construction and repair, and during part of the time—for about six months—in charge of the construction department.

7. Question. Did you go to Manila Bay in the summer of 1898?

Answer. Yes.

8. Question. State the circumstances under which you were sent there and what duty you went on.

Answer. I was ordered there, under telegraphic orders from the Navy Department, immediately after the news of the battle of May 1. I arrived in Manila on the 30th of June under general orders to report to the commander in chief for such duty as he might assign, and was by him attached to his staff, and so remained until the following year—until October, 1899.

9. Question. Please state what your first duties were when you arrived there.

Answer. General duty on the staff of the commander in chief.

10. Question. Did your duties embrace the consideration of the question of the saving of any of the Spanish vessels which had come into the possession of the United States?

Answer. Not until the cessation of hostilities.

11. Question. What duty did you perform in this connection after the cessation of hostilities?

Answer. I made an examination of the wrecks of the *Isla de Luzon*, *Isla de Cuba*, and *Don Juan de Austria* with divers; made first a superficial examination of the parts above water and then an examination with divers. I found out that the vessels were very deeply submerged in the mud and that the machinery, so far as it was accessible, was heavily coated with a deposit of mud or grease, leaving a fair inference that the engines could be recovered in good condition.

12. Question. How long was that after your arrival?

Answer. It was two months, I believe.

13. Question. Did you make any examination of the *Isla de Cuba*, *Isla de Luzon*, and *Don Juan de Austria* before the cessation of hostilities?

Answer. Only superficial; only such examination as could be made by rowing around the ships.

14. Question. What was the object of the examination that you made?

Answer. To see whether they were worth raising.

15. Question. Please state, in a general way, what the condition of these three vessels named was, and particularize the condition of the hull, the boilers, the engines, and machinery, and any other parts that you thus examined.

Answer. The examination with the wrecks under water was only suggestive of what might be found. As indicated in the previous answer, the parts of the machinery accessible to divers were found in such condition as to warrant the belief that no serious damage had been done through long exposure under water. The hull under water and in the mud had to be taken on faith entirely. The wooden hull above water aft was entirely burned out, and the metal deck beams and sides badly buckled by fire. In general, the condition of the wrecks as determined

by the series of examinations of divers and inspections on the surface showed that the entire fittings, woodwork, etc., would have to be renewed, the machinery entirely taken apart and cleaned, and portions re-machined. The condition of the boilers was entirely unknown, and there was no possible way of making any examination at this stage of the work.

16. Question. Were these vessels, in the condition in which you found them, of such value as to justify their being raised?

Answer. They were.

17. Question. What steps did you take in the direction of raising and restoring them?

Answer. After making as thorough an examination by divers as was possible, and taking photographs of the wrecks, I made arrangements with the Hongkong and Whampoa Dock Company to send a representative to Manila to make an examination, with a view of submitting bids for supplying labor to do the work. The Varadero de Manila, the only shipbuilding plant in the vicinity of Manila, was also invited to submit tenders, and their representative made an examination to that end. The examination and report of the Hongkong and Whampoa Dock Company's representative being favorable, bids were formally asked for and submitted, and a contract was subsequently made by the commander in chief.

18. Question. What were the steps taken in the actual work of the raising and restoration of the vessels?

Answer. You want a description of the different parts?

19. Question. In a general way what you did. I don't care to go into details.

Answer. In a general way it consisted—first, in closing up all apertures below the water; building up a cofferdam around the ship, which was in effect a prolongation of the ship's sides; installation of centrifugal pumps with suctions in the various compartments of the ships and then pumping out the vessels; but, due to the very heavy bedding of the vessels in the mud, great difficulty was experienced in raising them, and in some cases they had to be sunk three or four times after being raised in order to work them out of the very heavy mud berth in which they had established themselves.

20. Question. What was then done after they were raised?

Answer. After they were raised and taken into deep water they were towed to the slip-way at Canacao; had their bottoms cleaned; holes that had been temporarily patched were permanently patched for the voyage to Hongkong; temporary decks were laid; machinery was temporarily overhauled; boilers put in temporary repair, and, in general, the vessel fitted out for the voyage to Hongkong, whither they were to go under their own steam. Before starting out preliminary trial trips were made in the bay to see that everything worked properly and that the risks of the voyage were reduced to a minimum. By a provision in the original contract an insurance of $200,000, Mexican, was placed on each vessel before undertaking the voyage and the policies delivered into the hands of the commander in chief of the United States naval forces on the Asiatic Station.

21. Question. What is $200,000, Mexican, in American money?

Answer. It fluctuates. At that time it was about $95,000.

22. Question. Was there insurance to that amount on each vessel?

Answer. Yes.

23. Question. How did the vessels get to Hongkong?

Answer. Under their own steam.

24. Question What, in your judgment, was the value of each of these vessels in the condition in which you found them?

Answer. From an examination made after raising them I should consider $120,000 for the *Isla de Cuba*, $110,000 for the *Isla de Luzon*, and $95,000 for the *Don Juan de Austria* very conservative estimates, and my opinion is quite confirmed by the ease with which insurance of $200,000, Mexican, was placed upon the vessels before their departure to Hongkong, Lloyd's representative being required to visit the vessels and recommend whether these risks should be taken; and as the vessels had to cross at a tempestuous season of the year, with a decided element of risk, there is little chance that an insurance company would have been willing to have taken any risk except one well within the value of the vessel.

25. Question. Please state whether the insurance which you said was made on each one of these vessels represented the total value of the vessel at the time, including the cost of raising, or was entirely for the benefit of the United States.

Answer. The insurance was entirely for the benefit of the United States, and covered the interest that the United States held in the vessel.

26. Question. Had the United States been at any cost in connection with the raising?

Answer. The United States had been practically at no cost, except the preliminary examination, and that was a matter of only a few hundred dollars. The contract provided that no part of the payment for raising and equipping the vessels should be made until the vessels were in Hongkong, and that before leaving Manila for Hongkong they should each be insured for $200,000, Mexican, for the benefit of the United States Government.

27. Question. Have you examined the report of Naval Constructor Hobson on file in the Court of Claims in regard to the value of these vessels?

Answer. I have.

28. Question. What is your judgment as to the valuation placed by Mr. Hobson upon these vessels prior to repairs?

Answer. I think Mr. Hobson's estimate is very nearly correct. It will be noticed that my own estimate differs from it only by a small percentage; $5,000, I think, in the cases of the *Cuba* and *Luzon* and $9,000 in the case of the *Austria*.

29. Question (by Mr. CHARLES C. BINNEY). Mr. Capps, were the decks of these vessels above water before you began to raise them—could you see them at low tide? How much water——

Answer. The forecastle decks of all three of the vessels were a little above water. The after decks of all three were entirely burnt out.

30. Question (by Mr. CHARLES C. BINNEY). Was that at low tide or all the time?

Answer. The forecastle decks, you mean?

31. Question (by Mr. CHARLES C. BINNEY). Yes.

Answer. At any time.

32. Question. Then you examined these vessels more carefully after they had been raised, of course, than you did before. Were there any shot holes in them?

Answer. Very few.

33. Question. The connections that let in the sea had all been opened?

Answer. All the sea connections had been opened, and the sinking of the vessels was undoubtedly caused by opening the sea valves.

34. Question. Opened by the Spaniards?

Answer. Opened by the Spaniards when they abandoned the ships. The vessels were entirely perfect, so far as flotation was concerned, after the battle, and they steamed around Cavite Point, dropped their anchors, reversed their engines, and backed ashore, and then opened all the sea connections.

35. Question (by Mr. CHARLES C. BINNEY). How did the wrecking outfit which you got from China (this outfit, I understand, came from China) compare with such wrecking outfits you can get on the Atlantic coast here?

Answer. The wrecking outfit consisted only of pumps and the ordinary materials that you can get in any first-class ship chandler's establishment, and men.

36. Question (by Mr. CHARLES C. BINNEY). You did not have such a wrecking outfit as you can get here?

Answer. From such knowledge as I have, I should say no.

37. Question (by Mr. CHARLES C. BINNEY). Would that be below the average of what you could get on this coast? Give a comparison between the wrecking plants that were available on that coast and those that were here.

Answer. I have very little familiarity with the wrecking outfits of this coast. I can do best by stating exactly what we had there. We had only three or four pumps, varying from a 12 to a 6 inch, and just the ordinary outfit of material in the way of oakum, felt, small tools, etc.

38. Question (by Mr. CHARLES C. BINNEY). As far as the wrecking outfit goes were the pumps——

Answer. Of the four pumps one was a 12-inch, two were 9 and one 6 inch. The barges and derricks and apparatus of that kind were supplied from the resources of the navy-yard. The provisions of the contract expressly stated that the Government was to assist in every manner possible.

39. Question (by Mr. WILLIAM B. KING). How long were you in raising these ships with the appliances that you had there?

Answer. I can only state approximately. We began, I believe, about the middle or latter part of September, and the first vessel was ready to make her trip to Hongkong the early part of December.

40. Question. When were the other vessels ready to go?

Answer. The second one was ready within a week after the first, and they finally started for Hongkong the same day, the first vessel having made one false start—having gone out and come back. The third and last one, the *Don Juan de Austria*, left about the middle of January, as I recall; I can not be absolutely sure of the date.

Cross-examination by Mr. CHARLES C. BINNEY:

41. Question. Did you make any inspection of the other Spanish vessels which were sunk in the same engagement?

Answer. I did.

42. Question. Of all of them?

Answer. Yes.

43. Question. Could any of them have been raised, in your opinion?

Answer. Yes; several of them, but not with advantage.

44. Question. Which vessels could, in your opinion, have been raised?

Answer. As a mechanical problem, all of them, without considering advantage or disadvantage.

45. Question. When you say they could not have been raised with advantage, do you mean that in every instance the cost of raising would have been greater than the value of the vessel when raised?

Answer. I mean that the cost of raising and fitting out would have been too much to have justified fitting out that type of vessel. The statement that the *Cuba*, *Luzon*, and *Austria* offered special advantages for raising and fitting out was due to the fact that they alone of all the larger vessels engaged in the action of May 1 were able to steam off after the battle, indicating that the machinery was at that time in good condition. Examinations of their hulls and reports of those present on the 1st and 2d of May indicated that there had been no explosions or other serious damage to the vessels as a result of the action. On the contrary, it was known that the engines of the *Velasco* and *Don Antonio de Ulloa* were dismantled—the vessels themselves being at anchor. The *Castilla* was a wooden ship, and a total wreck, and her magazines had also exploded. The *Reina Cristina* received the concentrated fire of the fleet and suffered an unusual amount of damage; her hull was completely burnt out fore and aft, and her magazines had exploded, besides having her engines disabled before the action was over. The small gunboats which were in the action suffered explosions of their magazines after being burned and partially sunk.

46. Question. The cost of raising and fitting out would have differed considerably with these different vessels, would it not?

Answer. Yes; not the three which were saved, but the others.

47. Question. As a general rule in such cases, what proportion should the cost of raising and fitting out bear to the value of the vessel when raised and fitted out to enable you to say that the undertaking was done with advantage?

Answer. It would be very hard to fix a general proportion, but the actual facts in this case were that recommendations were made to the Navy Department and that authority was given to raise and fit out these vessels if it could be done at a cost not exceeding 50 per cent of the cost of a new vessel of that kind.

48. Question. And no such recommendation was made in the case of the other vessels?

Answer. No; because it was believed that the cost of raising and fitting out would be nowhere near 50 per cent of the cost of a new vessel—would be very much in excess.

49. Question. Should you say that if the cost of raising and fitting out were 75 per cent of the cost of a new vessel it would be worth while to raise and fit out the sunken vessels?

Answer. Does this apply to other vessels or to these three vessels?

50. Question. My question refers to sunken vessels of whatever type, such as those which were sunk at Manila.

Answer. Generally speaking, I would by no means recommend the raising and fitting out of large numbers of vessels, if they were available, of the type found at Manila Bay at a cost of 75 per cent of the cost of new vessels; because the type is an old one, and, when raised and fitted out, they would not be nearly as efficient as vessels designed at the present time would be.

51. Question. Leaving out of consideration the possibly antiquated type of some of these vessels, were there any of them which might in your opinion have been raised and fitted out for a cost of 75 per cent or less of their value?

Answer. I doubt it. Certainly not in the case of the *Cristina of Castilla*, and in the case of the *Ulloa* and *Velasco* it was definitely known that the machinery was dismantled and the boilers not in place.

52. Question. It is probable, though, is it not, that some of these vessels could have been raised and fitted out for less than the cost of a new vessel of that type?

Answer. Yes.

53. Question. It is practically certain that such could have been done?

Answer. Yes.

54. Question. I notice that Constructor Hobson's report estimates that the total cost of raising, fitting out, and equipping the three vessels will be: *Isla de Cuba*, $100,000; *Isla de Luzon*, $110,000; *Don Juan de Austria*, $94,000. Do you know whether this approximate estimate was exceeded or not?

Answer. I don't know; and so far as I know, the final estimates have not reached the Department. From the contracts which had been made up to the time when I left I should say that they ought not to be exceeded.

55. Question. And those figures, as you understand, include the value of any labor, or material, use of machinery or tools furnished the contractors by the United States?

Answer. No.

56. Question. You spoke of certain machinery having been furnished the contractors by the United States in general. Can you give any estimate of the value of all the labor, if such there was; use of machinery, or material furnished the contractors by the United States?

Answer. There was no labor, and the use of material would be covered by probably $2,500.

57. Question. Then my question covers the use of machinery which was used.

Answer. The Government furnished very little machine work. The contractors had it done at an outside establishment, and called upon the navy-yard for very little.

58. Question. Can you apportion in any way to the different parts of the vessels the estimates of value that you have made?

Answer. Yes, I can; but it will require considerable time and labor to do it exactly.

59. Question. Please state precisely how you reach the estimate of $120,000 for the *Isla de Cuba*, $110,000 for the *Isla de Luzon*, and $95,000 for the *Don Juan de Austria*?

Answer. My estimate is based upon my knowledge of the original cost of the vessels, which was about £56,000 in England for the *Cuba* and *Luzon*. No absolute data was obtainable concerning the *Austria*, but she was a larger vessel than the others, built in Spain, and her cost was actually in all probability more; but I have considered her first cost as approximately the same. In conjunction with the first cost of the vessel I took into consideration the probable deterioration due to service, and as a further consideration——

60. Question. What percentage did you allow for that probable deterioration?

Answer. Well, at least 20 per cent. And as a further aid in determining the approximate value, consideration was given to the insurance value of the vessels before leaving Hongkong.

61. Question. Do I understand you to say that in making these estimates of value of these respective vessels when raised you took into account merely their original cost, actual or supposed, the presumed percentage of deterioration prior to the battle of Manila, and the amount for which they were insured?

Answer. And I should say, in addition, the cost of building a new vessel of the same type in the United States.

62. Question. If the United States had not seen fit to raise and use these three vessels, what, in your opinion, could they have been sold for, as they lay, to outside parties?

Answer. It is exceedingly hard to say. I can state that, with reference to the other wrecks, they were advertised for sale and no bids were received; but that is necessarily qualified by another consideration, viz, the United States not having a completed title to the territory at that time.

(Objection is made to this question by Mr. William B. King as an improper question to establish values.)

63. Question. Is it not a fact that if the United States had offered these three vessels for sale as they lay, it would have been impossible for them to have received for them anything like the valuation you have placed upon them?

Answer. It seems to me impossible to answer a question of this kind, since they were not advertised. If it is a question which I can answer according to my belief——

64. Question. According to your judgment.

Answer. I am very sure not, for there is no other country to which they would have been so valuable as to the United States. Also, it would have been like buying a "pig in a poke," if I may use the expression, as they were under water.

Last written interrogatory. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this case, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Answer. Nothing that now occurs to me.

W. L. Capps.

Deposition of Ben W. Hodges, on behalf of libellant, taken at Washington, D. C., July 27, 1900.

Also at the same time and place, in the presence of the same counsel, personally appeared Ben W. Hodges, a witness on behalf of the libellant, who, having been by me first duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, did thereupon depose and say as follows:

BEN W. HODGES, being duly sworn and examined as a witness for the libellant, testifies:

By Mr. BENJAMIN MICOU:

1. Question. What is your name, occupation, and age?

Answer. Ben W. Hodges; 44 years old; am a naval officer by profession.

2. Question. How long have you been in the naval service?

Answer. Twenty-seven years.

3. Question. What duty have you been on as naval officer? What branch of the service have you been in?

Answer. I have been a line officer.

4. Question. And what duty have you had?

Answer. I have performed duty at sea as midshipman, and as ensign, and as aid to admiral, and as lieutenant.

5. Question. What is your present assignment of duty?

Answer. At the Naval Observatory.

6. Question. Where were you May 1, 1898?

Answer. I was in the bay of Manila.

7. Question. What duty were you on at that time?

Answer. I was on special duty on the staff of the commander in chief of the United States naval forces on the Asiatic Station, and in charge of the collier *Nanshan*.

8. Question. What was the next duty you had out there after that?

Answer. After May 1?

9. Question. Yes. Did you remain on the *Nanshan?*

Answer. I remained on the *Nanshan* until October 1. In the meantime I was assigned to all manner of duty by the commander in chief.

10. Question. Well, did you have any duty at the Cavite arsenal?

Answer. Yes; I was the first officer assigned to duty at the arsenal by the commander in chief.

11. Question. When was that?

Answer. That was about the 20th of May, 1898.

12. Question. The 20th of May, 1898?

Answer. Yes.

13. Question. How long were you on duty there?

Answer. I was on duty, with some exceptions, until the 23d of March, 1899.

14. Question. Will you state specifically what your duty was there, or did you say you were on duty on land? What was your specific assignment of duty there?

Answer. I was ordered to engage a force of Filipinos and clean up the navy-yard and get the ships and machinery in readiness for work.

15. Question. Well, were you in command of the arsenal or navy-yard?

Answer. I was in command during this time. About the middle of June, after the yard had been cleaned up, the admiral assigned Commander Wood, of the *Petrel*, to duty in command of the navy-yard. I was retained as his senior aid. Chief Engineer Hall was assigned to duty as chief engineer of the yard and Carpenter Itrich was assigned to duty as carpenter of the yard.

16. Question. Chief Engineer Hall was there at the time Wood had command of the yard?

Answer. Yes.

17. Question. Were you familiar with the stores that were in the navy-yard?

Answer. Yes; both while cleaning up the yard and during the rest of my stay there. I entered every building in the yard every day and repeatedly during the day, and had a good deal to do with the distribution and use of the stores.

18. Question. State what it was you had to do with the distribution and use of the stores, distinctly.

Answer. There was no inventory taken of the stores, but whenever they were wanted by a ship they sent an officer with a boat's crew of men either to Captain Wood or myself, and would ask for certain things, and if we had them and could spare them we would always give them to them. We kept no account of it because we had no clerical force, but the stores captured by us from the Spaniards there were used in that way just as emergency required, and used for fitting up and repairing the buildings for the occupancy of the troops and repairing the tugs and lighters.

19. Question. Have you seen this memorandum of stores that was prepared by Chief Engineer Hall?

Answer. Yes.

20. Question. Have you examined it?

Answer. Not very carefully. It is several days ago, and I don't remember now the items he mentions.

21. Question. In looking over these items can you identify any of them as items that were there?

Answer. I remember——

22. Question. Take the first building—the first floor.

Answer. I am perfectly familiar with the building, and I know the kinds of material they had in it, but the quantity I would not testify to, but I remember that there were quantities of everything mentioned in that building.

23. Question. Is there anything else on that floor of that building that is not mentioned there, that you remember?

Answer. No; I think that is a pretty thorough list.

24. Question. How about the second floor of the same building?

Answer. It is the same way with that.

25. Question. Building No. 2. Are you familiar with that building?

Answer. I am.

26. Question. Have you looked over the things inventoried in that building by Mr. Hall?

Answer. On the ground floor of that building I should say that everything he mentions was there, but I doubt whether he gives as large an

amount as he probably ought to have done. I notice the item of nails, for instance.

27. Question. Point out any items that you think he did not give as large an amount of as he should.

Answer. I think this item of nails he did not give. I should say there was 1,000 pounds of nails there. We did not have to buy any nails for a long time; used those that we found.

28. Question. Is there anything besides what he did mention that you remember?

Answer. No.

29. Question. Are you familiar with the value of these things at all?

Answer. No; I have never had charge of stores of any kind mentioned in this report. My experience of values is with navigating instruments and surveying instruments, and there are none put down here whatever.

30. Question. As to building No. 3. Are you familiar with that building and its contents?

Answer. Yes; and I should say that Mr. Hall's account of what is contained in the building was very accurate.

31. Question. What about building No. 4, the first floor?

Answer. That floor they had great quantities of iron and other metals piled up in a rack, but I never formed an estimate of how much there was except the 400 feet of corrugated iron for roofing. We used immense quantities of that for covering the buildings in the yard. Nearly every one of them had been perforated by shots fired from the ships, and the roofs had to be repaired very generally.

32. Question. What did you say about the amount of this iron there was there?

Answer. I should say I don't think Mr. Hall's estimate is excessive. It was a large storehouse and an immense amount of material there.

33. Question. What of the second floor?

Answer. This was, as he describes it, a storehouse for ordnance material. He does not mention cartridge bags there. There were a number of these.

34. Question. How many would you say?

Answer. I should say 500.

35. Question. Do you know anything of the value of cartridge bags?

Answer. About 30 cents apiece I should estimate, without knowing. I have never had any.

36. Question. What are these bags, Mr. Hodges?

Answer. They are bags made of bunting that they use to hold the powder. They are used with the muzzle-loading guns mainly. You put the charge of powder in a bag and put this cartridge in the gun before you do the shell, and it is the bag that holds the charge. The powder is weighed and put into the bag. It is made of bunting and has a cord around the end to tie it up with after it is filled with powder.

37. Question. Was there anything else on this floor?

Answer. I don't see anything else.

38. Question. What of building No. 5, first floor.

Answer. That was another building devoted to the storing of iron and steel and other metal, and I take Mr. Hall's estimate as correct. I

remember very distinctly the breech-loading rifle. That was lying right in the passageway of the building. There was nothing on the top floor of the building.

39. Question. What of building No. 6.

Answer. That was a machine shop, and I remember the machinery in there of all kinds, but the metal I don't remember. I am sure that they had metal of this sort there, but the amount I don't know.

40. Question. As to the next building, No. 7?

Answer. I saw the items mentioned here, the steam launch, engine shafts, propellers, and the gear, but I don't remember the numbers of these things.

41. Question. Do you remember——

Answer. I don't think Mr. Hall mentions anywhere that about this building (No. 6) there was a sail loft.

42. Question. (By Mr. CHARLES C. BINNEY.) About this building No. 6?

Answer. Yes, above this building (No. 6), over the machine shop.

43. Question. (By Mr. CHARLES C. BINNEY.) I thought you had started on No. 7.

Answer. I did not know whether he had put this sail loft over building No. 7, but it ought to be over building No. 6.

44. Question. Do you know anything of the contents of the sail loft?

Answer. The sail loft contained a considerable quantity of old canvas, for which there was a great demand. We used it for making awnings and covers for provisions; used it entirely up.

45. Question. Was this cotton or hemp canvas?

Answer. I think some of it was flax and some of it cotton.

46. Question. Do you know anything of the quantity of this canvas that was there?

Answer. No; I could not estimate, it because it was all secondhand. It had been made up into sails and awnings.

47. Question. When you speak of secondhand, do you mean used, or had been made up for use?

Answer. It had been used.

48. Question. As to building No. 7, then?

Answer. In building No. 7, I merely know that class of material mentioned there, but the amounts I do not remember.

49. Question. Well, as to the next building? Just take these up in regular order and——

Answer. No. 8?

50. Question. Yes.

Answer. I remember iron in that building. In building No. 9 I remember seeing the boiler-covering plates. In building No. 10 I remember articles of the kind mentioned here. In building No. 11 I remember the steam fire engine and hose reel, and the hose and the fire buckets. In building No. 13 I remember the articles mentioned there. I remember the articles mentioned in building No. 14, the pattern shop. In building No. 15, the foundry, I remember they had an amount of metal there for casting—the molding sand and the charcoal. I remember seeing all these things. In building marked No. 16, the fire brick and the red brick I remember, and he does not mention a lot of tiles that they had there. They had some very pretty tiles.

51. Question. That was in which building, No. 17?

Answer. No; in No. 16.

52. Question. How much tiles—how many tiles?

Answer. I should say there were 1,000 of them. What their value is, I don't know. The lot near by, marked 17, the lumber; I know there was a vast quantity of it, which lasted us for months. In the torpedo storehouse, building No. 18, I remember the Schwarzkopf torpedoes and the submarine mine. In the shed of the building adjoining, he mentions 200,000 cubic feet of lumber. I don't believe that is excessive. The artillery shop I remember; the gun carriages, several of them. In the building marked 20, I remember the boiler mentioned. In the building marked 21, I remember the steam launch and the deckhouse, the carpenters' chests and tools. In the building marked 22, I remember the sheet iron, and that they had some unfinished masts made of iron, and that they had a lot of iron plates which were fitted for side armor for the light gunboats. The submarine mine mentioned there I don't remember as being in this shop. There were fully that many submarine mines in the yard at various places, in all states of completion.

53. Question. How many of these masts were there, as far as you can remember?

Answer. Two, I think.

54. Question. What sized vessels were these masts used on, and how long are the masts?

55. Question. The masts I should estimate to be about 40 feet long and intended for vessels of the size of the *Don Juan de Austria*.

56. Question. Can you state the value of such masts?

Answer. I can not.

57. Question. Can you approximate it in any way?

Answer. As I have never had any experience in estimating the value of such things, I can not.

58. Question. What about these plates. How many of these were there?

Answer. There were enough to go around the *Callao*, and we afterwards gave them to the *Callao* to protect her from rifle fire.

59. Question. Were these ordinary iron or steel plates?

Answer. Just iron plates of half an inch thickness, and they were fitted with lugs at the top to hang over the ridge rope.

60. Question. What were the dimensions of these plates?

Answer. They were about 40 inches by 9.

61. Question. What was the purpose of using them on these vessels?

Answer. To protect the crew from rifle fire on the rivers and close inshore.

62. Question. Did you state how many there were? State generally, if you can remember.

Answer. I should say there were 150.

63. Question. Do you know anything of their value?

Answer. No; I should estimate their value at $1 apiece.

64. Question. Did you state your recollection as to the other things that he has put down in this building?

Answer. Yes.

65. Question. What is your recollection about these other things?

Answer. The submarine mines I don't remember about being in the building, but they were in the yard.

66. Question. What about the thousand pounds of sheet iron?

Answer. I should say there were fully that much.

67. Question. And then as to the building No. 23?

Answer. The articles mentioned in building 23 were all there, except I don't remember whether the four Schwarzkopf torpedoes were in this building.

68. Question. You say you don't remember them?

Answer. No; the Schwarzkopf torpedoes were, some of them, in a wrecking lighter, and Mr. Hall may have put them in this building after they had been taken out of this wrecking lighter. This lighter was brought into the yard and the Schwarzkopf torpedoes were taken out after a while.

69. Question. You were there before Mr. Hall, were you not?

Answer. I was on duty there before Hall was, but he was on shore before I was. He went over occasionally to do odd jobs for his own ship, I think, and Kaemmerling did some other work, but it was not general navy-yard duties; I was the first officer assigned to that kind of work.

70. Question. What about building No. 24.

Answer. End of wharf marked 24? I remember these large boilers there.

71. Question. What about building No. 25?

Answer. The point marked 25, I remember the Rathgen paint very distinctly, and as to lot marked 26, I remember that the propeller blades, the anchors, shafts, and other items mentioned were there.

73. Question. Now is there anything else that you remember—any other materials in the yard beside what is included in this list here?

Answer. I remember in the place called Guadalupe Bastion here there were at least a dozen anchors, some of which we used. They varied from 500 to 2,000 pounds in weight.

74. Question. Well, can you state what was the value of these anchors?

Answer. I don't know what anchors are worth.

75. Question. Is there anything else besides what you have mentioned that you can remember being there besides the anchors?

Answer. Not definitely enough to give an estimate of the amount or value. There were other things. There were coiled up in different parts of the yard any number of chains—anchor chains—both for big anchors and for boat anchors, and then there were at least four ship's boats in the shed in the rear of the building he calls 22 here.

76. Question. What is your recollection about coal, Mr. Hodges?

Answer. We found coal in two places right near the Guadalupe Bastion there and out at this gate of the navy-yard up here. The coal, all of it, was used by the tugs and lighters, not by the big ships.

77. Question. The articles that you have mentioned, were they all things that the Spaniards had had there and left there when they evacuated, or brought there by the Americans?

Answer. They were all left by the Spaniards. I have been very careful not to enumerate anything that was brought out by our people.

78. Question. What do you know about the capture of the cascoes? They were not at the yard, were they?

Answer. Yes, they were there. I know more about them than I do about anything else, because they were under my special charge. My duty was general supervision, charge of the administration and discipline of the yard, and all the crafts afloat were under my charge.

79. Question. Tell what you know about them.

Answer. They captured at the time of the battle of Manila Bay five cascoes, and subsequently, shortly before the arrival of the first troops and in preparation of their arrival, the Admiral sent over to the river on the other side of the bay and captured seven additional cascoes, making twelve altogether. These cascoes were cargo boats, used in discharging cargoes of ships anchored in the bay. They varied in capacity from 30 to 60 tons, and their value, as a matter of positive fact, varied from $1,500 to $1,800 Mexican apiece. I happen to know this because subsequently I was on a board to appraise the value of these cascoes and saw the bills of sale of nearly all of them.

80. Question. When were these cascoes sold?

Answer. They were not sold—simply appraised. It was not these particular ones they appraised. The twelve that I mentioned were captured before the army reached there. After the surrender of the town Admiral Dewey seized fifteen more on the ground of military necessity, but these were paid for.

81. Question. And they were the ones that were appraised?

Answer. Yes.

82. Question. And you stated this to show your knowledge of the valuation?

Answer. Yes.

83. Question. But he considered the twelve that he captured before the arrival of the army as prize of arms?

Answer. Yes. He refused to pay for any of those. The others were all wrecked transporting the army over to Camp Dewey. I don't know whether Hall mentions it in his list, or anybody else, but I might mention in this connection that there were two floating derricks or wrecking boats——

84. Question. What about these boats, Mr. Hodges? Do you know anything of their value?

Answer. They were in good condition, and were used, and they had all the necessary appliances for lifting weights. We used them just as we found them. The large one I should say was worth $3,000 and the smaller one $1,000.

Cross-examination by Mr. CHARLES C. BINNEY:

86. Question. What were the sizes of these wrecking boats?

Answer. They were flatboats. The large one was about 40 feet long and 15 feet broad, and it was capable of lifting a weight of about 7 tons. It could weigh more than that, but the derrick would lift that much.

87. Question. What means of propulsion had these boats?

Answer. None. They were towed.

88. Question. They were not seagoing boats in any sense?

Answer. No; just for use around the harbor.

89. Question. They could only be used in smooth water?

Answer. In comparatively smooth water. They could stand harbor

seas. They were not boats such as were provided for any of the ordinary ship's purposes.

90. Question. You could not have put a boat's crew on them and sent them to the nearest neutral port?

Answer. No.

91. Question. You could not have put a boat's crew on the cascoes and sent them to the nearest neutral port?

Answer. They were not intended for deep-sea navigation, for few of them had masts. They were only intended for use around the bay.

92. Question. You spoke of various vessels having used up a quantity of sailcloth or sails in a sail loft. This use began almost immediately after the battle of Manila Bay, did it not?

Answer. No. I stated in my testimony that I was not sent up here for duty till about the 20th of May, and then we did not begin issuing things until about the middle of June, to the best of my recollection, and this was subsequent to the appraisement made by the Coghlan board.

93. Question. Then do you mean that all this sailcloth or sails that were in the sail loft was used after the Coghlan board had made their report on the property that had been used?

Answer. Yes. The Coghlan board made a return of a lot of new canvas that had never been cut, and I think that was entirely taken up by the ships. There was a great demand for canvas for awnings and other purposes, but this old canvas was in good condition. It was not taken until after we had organized the navy-yard.

94. Question. I notice that the Coghlan board report covered a great many anchors. Were not these, or some of them, the anchors which you remember having seen in or near the Guadulupe Bastion?

Answer. No. The anchors there were never taken out until it was done under my supervision, and they were nearly all taken, probably most of them, since that date. There were none of these included in the report of the Coghlan board.

95. Question. You say that the Schwarzkopf torpedoes were originally in a wrecking lighter. About how many were there originally?

Answer. I think that there were about three or four. I am not positive as to the number.

96. Question. These are all the Schwarzkopf torpedoes that you remember seeing in the yard?

Answer. Those he mentions in the torpedo shop were distinct. Those were in addition. He mentions four. He mentions two as having been in building 18. There were two torpedoes there, and the ones that were in the larger wrecking boat were distinct and separate, and I think they were the same ones he refers to as being in building No. 23.

97. Question. You don't know anything about the value of Schwarzkopf torpedoes yourself, do you?

Answer. I do know that Schwarzkopf torpedoes bought in England by our Government during the Spanish war cost $2,376.

98. Question. That is complete, with heads, I suppose.

Answer. Yes. That was complete, with heads, but without the tools used in assembling and handling them.

99. Question. What would the value of the head be as distinguished from the rest of the torpedo?

Answer. I have never seen the value estimated in that way.

100. Question. They were marked in each case without heads?

Answer. Yes. I don't know about that. The only bill I ever saw for them was as a total, not in detail upon the different parts.

101. Question. In general in these cases where the quantity of articles in Mr. Hall's list are large you have no recollection of particular quantities?

Answer. I have not. I was not in charge. Mr. Hall had charge of the engineer's stores, of the iron, steel, and machinery, and Carpenter Ittich had general charge of the lumber.

102. Question. What proportion of the articles in Mr. Hall's list and those articles which you have said were in the yard, though not enumerated in his list, were actually taken away and used by the United States prior to April 11, 1899, when the ratifications of the treaty were exchanged?

Answer. Some of them were used up entirely. The lumber was all used up. The corrugated-iron roofing was all used up; the canvas was all used up; the cement was all used up, and half the anchors perhaps. The nails were all used up. The paint, oils, varnish were all used up. The hose mentioned were about three-fourths of them used, and some of the materials—all of the brass and all the copper, zinc, and tin, all that kind of material was used.

103. Question. A very large quantity of these stores and supplies was still remaining on March 23, 1899, when you left, was it not?

Answer. The iron of all sorts, bar and sheet, was still left there in large quantities, but I think that nearly all the other stores had been pretty well used. The shells mentioned in Mr. Hall's testimony—all these had been used which were adapted for the captured guns, such as those on the *Manila* and the *Callao*, and I should say that these shells were not more than 10 per cent of the total.

104. Question. Taking the property in the yard as a whole, however, is it not a fact that at the time you left the amount of property which had been removed for the use of the forces of the United States was small in comparison with that which still remained?

Answer. I should say that the amount of property which we found there on taking possession of the yard was great in proportion to what remained when I left the station. It had been nearly all used up.

105. Question. Are you acquainted with Lieut. Horace N. Jones?

Answer. Yes.

106. Question. Were you at the yard or Cavite when he was there?

Answer. He was there; came when Mr. Hall was detached.

107. Question. Were his duties such as to acquaint him with the amount of property of various kinds in the yard, and the amount which was used?

Answer. Yes; to acquaint him with the property that was there during that interval of time—which was not very long—that he was on duty there. My impression is that he was not on duty more than a month, if that long.

108. Question. Other than those particular lines of articles to which you have referred, you can not state definitely how much of this property was used up before you left and how much remained, can you?

Answer. No; outside of the iron and the hawsers and the equipment stores.

109. Question. Equipment stores?

Answer. Yes; equipment stores that were taken from the Spanish ships and left there just before the battle. I don't know that any use of them to any great extent had been made, but outside of the iron and the hawsers and the shells, the stores had been nearly exhausted. We were at that time getting down so that we had to use the stores brought out for the United States Navy.

110. Question. Do I understand that the equipment stores had not been used to any large extent?

Answer. We must specify very closely, because he mentions here in building No. 23, storehouse on the south wharf, a lot of miscellaneous equipment stores for vessels of iron and other vessels. I don't think they had all been used up yet. Of the 50 tons of chain cable and moorings mentioned in the same building, I should say that half had been used.

111. Question. Take building No. 1, first floor. Which of these articles to your knowledge were not there when you left?

Answer. They had nearly all been moved to give place to stores shipped out from the United States. I don't think there were any of those things left there. These buildings were entirely cleaned of all the Spanish stores.

112. Question. Do you mean to say all of the articles referred to in the various quantities referred to under the heading of building No. 1, first floor, had been used, or taken on board the vessels of the United States before you left?

Answer. No; although some portion of them had been devoted to that use, and some of them had been removed from this building and stored in other places.

113. Question. The things to which you refer were still in the yard?

Answer. Yes.

114. Question. Can you state what proportion of them were still in the yard?

Answer. No; I can not.

115. Question. Can you state what proportion of the articles of the second floor were still in the yard when you left?

Answer. No. Some of the items there, the carpenter's tools, for instance, had been used up; the side lights—only a few of them had been taken; the lamps and lanterns—only a few of these were taken and used; handspikes had been taken and all used up; and the capstan bars had been used up, and the plumber's supplies and tools had been used; all the hose had been used up and all the hair-felt and asbestus packing had been used; the balls and cones had been taken and used, and the handy-billy pumps, the last item mentioned there, had been used.

116. Question. When you say used, you mean they were no longer in the yard?

Answer. They had been taken around for pumping purposes in the yard, but they had been used up and broken up just in use; worn out in use pretty thoroughly.

117. Question. What articles or what proportion of the articles in building No. 2 were not yet in the yard when you left?

Answer. The oil, the paint, the varnish, the tallow, the rosin, nails, bolts, rivets, chalk, wire hawsers had all been used up. This takes every item but one in this list.

118. Question. How about the second floor of this building?

Answer. My impression is that the rubber sheet and the asbestus were used up. The glass for side ports had not been used to any great extent.

119. Question. How about building No. 3?

Answer. My impression is that this junk spoken of there was sold at auction.

120. Question. Have you any idea what it brought?

Answer. I have not.

121. Question. How about building No. 4?

Answer. The boilers had not been used, and now we come to this great mass of iron, and, while they were using it constantly, they did not use, I think, more than 25 per cent of it. The corrugated iron for roofing was all used. The boiler tubes—I don't know what became of them. The searchlights we did not use. Of the shells I gave an estimate somewhere else that 10 per cent of these had been used. All the tin and all the lead had been used, I think. On the second floor the ordinary material mentioned there had all been used up or stowed away. I don't know what became of it.

122. Question. What about building No. 5?

Answer. The corrugated iron roofing there had all been used and the hemp hawsers had been used. About the sheet iron I don't know. The tubing mentioned—I don't know about that, and the scrap iron and the breech-loading rifle—I think most of these articles remained. The zinc had been used up and the brass and copper rods, I think, were all exhausted. In building No. 6 the miscellaneous brass castings, I think, had all been used. The five steam-launch engines, complete—I don't know. A good many of these steam-launch engines were fitted up for use—what proportion of them I can not say. I don't think the old condenser tubes had been exhausted, and the steam pumps had been used up. I am sure about that for we had to buy some pumping outfits. In building No. 7, about the proportion of those launch engines, as I said, I don't know. Quite a number of them were used, and the main shafting for marine engines I don't think had the crank shafts and propeller shafts. The steam-launch propeller was probably used. Of the miscellaneous gear I don't know how much was used. The wire mentioned, I think, was all used. In the blacksmith shop they were constantly drawing on the iron there, but what proportion of it had been used up I can not say. In blacksmith work I think all the boiler covering plaster had been used. The boiler shop, I think that—I don't know about the boiler tubes or the sheet iron. I think perhaps four of the steam-launch boilers had been used and one of the galleys. The steam fire engine in building No. 11, the hose reel and hose had been used. The fire buckets I don't think had. It was bought originally for extinguishing fires at the yard. It was not intended to be taken away. The fire buckets had all been worn out. In building marked No. 13 the iron rails had all been used up in extending the railroad in the yard. The cement had all been used up and the rosin had all been used up and about half the lime. In building No. 14, the pattern shop, the patterns all remained pretty much as they were. In building marked 15 I am quite sure that all this material was used up because we had to supply material from other sources before I left.

123. Question. Do you include the iron?

Answer. Well, they were using it all the time. That was pig iron. I would think that they used all the lot in building No. 15, but the iron which I said at first was not used up by this I mean at the place marked 16. The fire brick and the red brick were all used, and on lot marked 17 the lumber was all used except probably some of the heavy oak knees. I should say that nine-tenths of it had been used. In building marked 18 the Schwarzkopf torpedoes—no use had been made of them, nor do I think any use had been made of the submarine mine. In building marked 19 the 200,000 cubic feet of lumber had been exhausted. In the building marked 18½ the gun carriages spoken of there had not been used. In the building marked 20, boiler shed, the old boilers were fitted up for use as water tanks around the navy-yard, and the two marine boilers, as Mr. Hall says, had been used on vessels. I don't know what became of the smoke stacks. In the carpenter shed the steam launch, all that material had been expended.

124. Question. When you say expended in regard to the steam launch, I suppose that you mean that had been fitted up for use—not destroyed?

Answer. Yes. They had been fitted up and put into use. In the building marked 22 I don't know what use was made of the submarine mine. They were probably still there, but the sheet iron in this shop was, I think, all used up. In the building marked 23 the miscellaneous stores for the Velasco, etc., I should say that probably 10 per cent of these had been used and half of the chain cables and moorings. The can buoys, just about half of them had been repainted and carried out into the harbor for use. The riggers' supplies had been used up, and I think the copper pipes. Of the manila hawsers perhaps half had been used. No use had been made of the Schwarzkopf torpedoes. Near to the wharf I think all the boilers had been fitted up as water tanks. At the point marked 25 all the Rathgen paint had been used. At the point marked 26 the propeller blades were broken up in the foundry is my impression. The anchors were not used. The old engines had not been used, and the—(he has got propellers in two places there)—we used some of these propellers, all the brass propellers were broken up to be recast for other purposes. Of the twelve cascoes captured by the fleet, eleven of them were wrecked in transporting troops to Camp Dewey and only one remained at the navy-yard when I left.

Last written interrogatory. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this case, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Answer. I do not know of anything that would be material.

BEN W. HODGES.

DISTRICT OF COLUMBIA,
County of Washington, ss:

I, Martha M. Beck, a notary public duly appointed for the District of Columbia, do hereby certify that on the 27th day of July, 1900, I was attended by George A. King, esq., William B. King, esq., and Benjamin Micou, esq., of counsel for the libellant, and by Charles C. Binney, esq., of counsel for the United States, and by the witnesses, Washington

L. Capps and Ben W. Hodges, who were of sound mind and lawful age, and the witnesses were by me first carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions made by them were reduced to writing by me, from their statements, and they, after carefully reading the same subscribed the same, after having made the alterations indicated thereon.

And I do further certify that I am not of counsel nor attorney for either of the parties in the depositions and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof I have hereunto set my hand this 17th day of August, 1900.

[SEAL.]

MARTHA M. BECK,
Notary Public.

Deposition of Carlos G. Calkins on behalf of libellant, taken at San Francisco, Cal., August 24, 1900.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Be it remembered that on the 24th day of August, 1900, I, Alfred C. Goldner, a notary public in and for said city and county, did cause to appear before me at my office at No. 530 California street, in the city and county of San Francisco, in the State of California, Carlos G. Calkins, to testify on behalf of the libellant in the case aforesaid, now pending in the supreme court of the District of Columbia, and the said witness, Carlos G. Calkins, choosing to affirm instead of being otherwise sworn, thereupon his affirmation was taken to tell the truth, the whole truth, and nothing but the truth, and he did thereupon testify as follows:

Direct examination by WILLIAM B. KING:

1. Question. Please state your name, age, and present residence.

Answer. Carlos G. Calkins; age, 50; residence, Berkeley, Cal.

2. Question. State whether you are in the United States Navy, and if so, what your present rank is.

Answer. I am lieutenant commander in the United States Navy.

3. Question. How long have you been in the Navy?

Answer. Since 1867.

4. Question. Continuously during that time?

Answer. Continuously.

4½. Question. Please state where you were on the 1st of May, 1898, and for the remainder of the next two or three months.

Answer. I was serving on board the U. S. S. *Olympia* on the Asiatic Station, and on the morning of the 1st of May the *Olympia* entered the Manila Bay and remained within the limits of that bay for the next four months.

5. Question. Were you a member of a board of appraisement appointed by Admiral Dewey to appraise certain of the enemy's property captured and appropriated by the United States Government on and after the 1st of May, 1898?

Answer. I was a member of that board.

6. Question. Will you please state the extent of the property which that board included in its appraisement?

Answer. The board included the captured vessels, namely, the *Manila*, the *Callao*, the *Leyte*, and a number of tugs and launches. We also appraised the armament, ordnance, and equipment of all these vessels. The appraisement also included a quantity of coal, rope, canvas, paint, and other material which was taken on board the vessels of Admiral Dewey's squadron during the months of May and June, 1898, and applied to public purposes.

7. Question. Would that include property taken during the whole of the month of June?

Answer. I think that the reports covered only what had been taken before the middle of June, but I have the impression there were supplementary reports a few days later, but the board included nothing that was taken later than June 20, I think.

8. Question. I hand you a copy of the proceedings of the board particularly referring to the proceedings of June 13, 1898, and would ask if that would aid your memory in fixing the date just referred to?

Answer. (The witness examining report.) I think that the lists were completed on the 13th of June.

9. Question. Beside the property that you appraised, was other property captured in the Cavite Arsenal?

Answer. There was a large quantity of naval stores, machinery, and equipment taken in the arsenal which was not taken on board any ship of the squadron during the sessions of the board, and was not therefore appraised by the board.

10. Question. What is the reason for the lapse of over two months from this session of the board of June 13, when the reports were received and the property taken on board, and the final report of the board?

Answer. Because the recorder represented that he required a great deal of time to consolidate the reports received from different ships and to determine the fair average price of the different articles. Most of the delay was on account of clerical—was a clerical delay on account of time required to copy. You see a rough copy was prepared several weeks before these copies.

11. Question. Do you know of the capture of any cascos in the month of May, 1898?

Answer. I know of none during the month of May, but in the latter part of June I went in charge of a small expedition into the town of Malabon and removed five large cascos which were stated to be the property of Spaniards. Those cascos were employed for public purposes for several months afterwards.

12. Question. Did you make any inquiry at that time to learn whether they were the property of Spaniards?

Answer. The men in charge of them said they belonged to the Spaniards. They were asked in every case whether they belonged to the Spaniards or the Filipinos. In either case they would belong to Spanish subjects, but they said they belonged to the Spaniards.

13. Question. Do you know anything about the capture of seven additional cascos?

Answer. I believe a number of them were removed from the same

neighborhood, but I don't know definitely anything about the capture of them.

14. Question. Have you any personal knowledge or information in regard to the capture of another lot of cascos subsequently?

Answer. There were certain cascos at the navy-yard when the fleet came in on the 1st of May, and those were seized and used for public purposes, but I am not sure as to the number of them, but I have seen a document from a Filipino, who stated that they were his property, and requested the return or compensation for them.

15. Question. Do you know anything about some cascos, one lot of cascos, which were paid for?

Answer. No; I don't know anything about any that were paid for.

16. Question. (By Mr. GORMAN.) How did the board obtain the list of articles included in their appraisement?

Answer. We sent out a circular letter to the captains of all the vessels of the squadron, requesting them to furnish the board with lists certified by the officers who had charge of the stores of each department, stating the quantities and estimated values of all stores taken for public purposes, and those lists were returned to the senior officer of the board.

17. Question. Is it only from this source that you derive your information that the articles embraced in this Coghlan report were only such as were taken for the use of the ships, and did not include the material and arsenal at Cavite?

Answer. The reports expressly certify in each case that the articles were taken on board the ship for public purposes.

18. Question. Then when you state that this report of the board does not include any material left in the arsenal at Cavite, your testimony is based on the accuracy of the returns of the various masters of the ships?

Answer. Based on those returns and also personal inspection. A very considerable part of the material in that report, the larger part of it, was inspected by the officers themselves on board the prizes (the vessels seized); a large part of it, a much greater return than on the lists received, estimating the value of the *Manila*, the value of her guns and the value of the rigging and equipment of the ship. And that was done in the case of all those vessels, and it amounts to a much larger proportion in the total value than the amounts covered by the returns from other vessels.

19. Question. Let me see if I understand you. You took the returns of the captains of the various ships as a basis?

Answer. As a basis of the amount of stores on board those ships; but, as I just pointed out, there was a larger amount taken in the prizes, and we valued that, and this is a consolidated report, where all the articles of the same class have been lumped together.

20. Question. This was a report of what had been furnished to the ships and what was taken on the prizes?

Answer. Everything covered in that report was actually afloat on the vessels under control of the United States.

21. Question. Did you make any inspection of what was contained in the storehouses and arsenal at Cavite?

Answer. No; I made no inventory or appraisal, no close inspection, because the board decided that the order they had received did not cover the navy-yard, and therefore made no official examination.

22. Question. You made no comparison, then, between your report and the articles incorporated in your report and the articles contained in the arsenal to see if there had been any duplication?

Answer. No, sir; there was no necessity for making any comparison for that purpose, because the report expressly certified that the things had been taken possession of and removed from the arsenal.

23. Question. Were—all of the articles embraced in this Coghlan list had been actually and permanently appropriated to the use of the United States on or before the 11th of April——

Answer. Before the 13th of June.

24. Question. The 11th of April, 1899?

Answer. Yes; they were appropriated in June, 1898.

25. Question. In June, 1898?

Answer. Yes, sir.

26. Question. (By Mr. KING.) April 11, 1899, was the date of the ratification of the treaty of Paris, was it not?

Answer. Yes, sir; but everything covered in that list was appropriated during the preceding year.

27. Question. That is, in 1898?

Answer. Yes, sir.

28. Question. These cascos to which you referred, where were they at the time they were taken?

Answer. They were lying in a canal in the city about 5 miles north of Manila, about 10 miles from the anchorage of the fleet.

29. Question. What condition were they in as to their capacity for being used?

Answer. They would carry from some 50 to 60 tons of freight, and they were found very useful, as they would hold 200 to 300 soldiers, and they were used in landing troops.

30. Question. Were they tied up to wharves?

Answer. Tied up in front of the town to piles. They were in charge of native crews who were lodging there, who were very glad to assist in removing them on the promise of temporary employment.

31. Question. What method of propulsion had they, if any?

Answer. They had none except by towing, and could only be worked by oars or pulling when they were not towed by vessels. When we took charge of them we towed them out of the river by small steam launch.

32. Question. They had no power of self-propulsion?

Answer. No.

33. Question. They were not capable of use anywhere except in smooth water?

Answer. Reasonably smooth water. They were capable of being used anywhere within the 25-mile circle of Manila Bay; they were useful throughout that area.

34. Question. Something of the nature of what we call a lighter?

Answer. Very much, except that they were roofed; an unusual lighter, and they had lodgings for their crews.

35. Question. How many of them was it that you say you got?

Answer. I moved five the same day—about the 30th of June.

36. Question. Of 1898, was that?

Answer. Yes, sir.

37. Question. What did you do with them?

Answer. Delivered them at the Cavite arsenal, where they were taken charge of by an officer, and were used afterwards for moving coal, stores, and troops.

38. Question. You know the value of them?

Anwer. I only know—I know it approximately. I think they were worth from $1,200 to $1,500 each.

39. Question. From what source do you get this information?

Answer. The only source of information I have is a claim made by the owner of some other lighters, stating their estimated value.

40. Question. Did you see the other lighters?

Answer. Yes, sir?

41. Question. I mean the ones for which claim was made.

Answer. They are all practically of the same class. There might be a slight variation in tonnage, and one might be lighter than the other, but they are about the same thing.

42. Question. In what condition of repair were they?

Answer. Those I removed were in good repair; they were selected for that.

43. Question. Mr. Calkins, can you take this appraisement and looking through these classes give any idea as to which of the classes were of property taken from the arsenal, and which of them were property captured afloat?

Answer. (Witness examining report.) "Canvas, cordage, and rigging" was removed from the arsenal.

44. Question. Suppose you take them up in detail, one after another.

Answer. "Cash" was captured afloat, I think; yes, I know it was.

45. Question. From what vessel?

Answer. The *Leyte*. "Anchor gear and chain," probably from the navy-yard. "Electric apparatus and material from the ships afloat." "Bags, boxes, and chests," I don't know. "Blocks," I don't know. Most of them they got from both sources, the navy-yard and afloat—captured afloat and from the navy-yard too. Te nearly all classes that would apply.

46. Question. Perhaps it will be easier to say "class 5."

Answer. There is no class throughout in which both elements, partly captured afloat and partly captured ashore, is not represented; I think there is no class from beginning to end in which that is not so.

47. Question. Class 28, "Ship and boat equipments."

Answer. That is a very badly worded phrase and most of it applies to the gunboats and vessels afloat.

48. Question. Please run through that class, which is the largest of all the classes, and see if there is anything there which you can identify as having been captured ashore?

Answer. I think some of the boats, cutter and gig, perhaps, were captured ashore; also some of the launches were on the ways at the navy-yard. The rest was captured afloat.

49. Question. Please look also at class 22, "Ordnance materials," and see if you can make any special differentiation there, especially as to the guns and mounts.

Answer. All the large guns were captured afloat. I think some of the

rifles—Mauser rifles and Remington rifles—under that class may have been captured ashore, but mostly everything was afloat.

50. Question. I would like to have you say if you can, starting with class 22, what you would include as captured ashore and what afloat, in such a way that the court can understand the particular articles.

Answer. Beginning with class 22, "Ammunition, canister, and cartridges, fuses, powder, and shells" were all captured afloat. The bayonets and cartridge belts I think were also captured afloat, and nearly everything in the class called "guns and mounts." Also some of the rifles may have been taken ashore, but the sponges and tanks were taken afloat.

51. Question. If you can, I should like to have you look over the other classes and see if you can make any specific discrimination there between what was taken afloat and what ashore.

Answer. In either class I find myself unable to discriminate. A considerable part of the articles named under every class were taken afloat, and in some of them some articles were taken ashore.

52. Question. Could you give any estimate of the proportion of the articles in the class about which you have been particularly specifying which were taken ashore or taken afloat?

Answer. I should think that the proportions were about equal—about half and half.

Mr. KING. That is all.

Cross-examination by Mr. GORMAN:

53. Question. In the expression "taken afloat," do you include articles which were taken from the Spanish ships that had been sunk or disabled in action?

Answer. Yes, sir; some articles were so taken, a very few, and not of great value, but I have included those.

54. Question. Will you please go through the list and specify, if you can, all of the articles that were taken from the Spanish ships that had been sunk or disabled in action?

Answer. I am unable to specify with any certainty those articles. The articles were of a similar class, but I am sure the proportion was very small.

55. Question. Can you point out some articles that were taken? Of course, I do not mean for you to be accurate, but to do the best you can.

Answer. Well, under "apparatus and material electric," that is class 2, the eight lamps, Ardois, with cable, were moved from one of the ships. That is class 2. It comes on the ninth page of the report.

56. Question. Now, supposing you look at—beginning on page b here. Look through class 1 and see if you see there anything which you think was taken from the ships sunk or disabled in action.

Answer. No; in class 1 I think there was nothing taken from disabled ships. In class 2 there were some articles taken, including the eight lamps.

57. Question. Find anything else in that class?

Answer. Nothing else of which I am certain. I think there were other articles removed from those ships, but I am not certain about it.

58. Question. How about class 3?

Answer. Nothing in class 3, 4, 5, 6, 7, or 8.

59. Question. How about class 9? Did you look over class 8 carefully?

Answer. Well, class 8 and 9 I am quite positive nothing was taken; that is to say, I do not recognize anything to have been taken.

60. Question. It seems to jump from class 8 to class 10 in my report.

Answer. That is so.

61. Question. How about class 10?

Answer. Nothing there was taken from the ships that were sunk.

62. Question. And class 14?

Answer. Nothing from class 14. That is, to the best of my knowledge. Of course, I can not be positive about things that are so widely scattered.

63. Question. The next class on my list seems to be class 16. Do you find anything in that list?

Answer. No; nothing in that list taken from the vessels destroyed; they were things taken from the vessels afloat; these vessels—the prizes.

64. Question. Do you find anything taken from ships sunk or disabled?

Answer. No; nothing from ships sunk or disabled.

65. Question. How about class 17?

Answer. Well, I have the same impression about that, but I am not positive.

66. Question. Class 19?

Answer. Same with class 19.

67. Question. How about class 20? You say there is nothing in class 19?

Answer. Nothing in class 19 that I recognize as having been taken from any ship that was sunk or disabled. The same thing applies to class 20.

68. Question. Class 21?

Answer. Same applies there.

69. Question. How about that certain steam steering gear in class 20?

Answer. I know that the *Petrel* put in a set of steam steering gear removed from some of the Spanish vessels, but I don't know which one; very probably from one of the disabled vessels.

70. Question. How about the eccentric rods mentioned in this class?

Answer. I don't know. I don't know anything about them. There was no such information given in the lists with which we were provided and no special investigation was made. I am giving only general information derived from the lists furnished.

71. Question. Can you find anything else in class 20 that you think might have been taken from sunken or disabled vessels?

Answer. Nothing that I recognize or ever heard of having been taken from a disabled vessel.

72. Question. How about class 21?

Answer. Same there.

73. Question. How about class 22?

Answer. Class 22, "Ordnance materials;" we had gone through that. I know that some of the smaller guns were removed. Rapid-fire guns with mounts were removed from the disabled vessels, but where they appear on this list I do not know.

74. Question. Do you recognize any of them on this list?

Answer. No; I don't recognize any of them positively, but I am sure that such guns were removed and were used afterwards.

75. Question. You think it probable that there are some of them contained in this list?

Answer. I think it probable that some of the 6-pounders or Nordenfelt guns were removed from the disabled vessels.

76. Question. Do you think it probable that any of the belts and scabbards, baronet belts, breechblocks were removed from the disabled vessels?

Answer. It is quite probable; but I don't know anything about it.

77. Question. How about the "B. L. R. Canet, with mounts and attachments?" That is at the bottom of page 91.

Answer. I could find out from certain lists in my possession what the armament of the *Manila*, for instance, was, but from any information contained in the list I am not able to say.

78. Question. Do you know what the armament of the *Don Juan de Austria*, *Isla de Cuba*, and *Isla de Luzon* was?

Answer. All the vessels were accessible, more or less, and if the *Cuba* were any more accessible or had any more material than any other of the ships, it might have been used.

79. Question. Do you think it likely that this B. L. R. Canet, with mounts and attachments, could have been taken from the batteries of the *Isla de Cuba* or the *Isla de Luzon?*

Answer. I think not. None of those used for public purposes were taken from those vessels. None of those included in the lists were taken from those vessels, I am quite positive, because the guns of those vessels were not fit to be used, being disabled by submersion and rust. None of the larger guns came from the disabled vessels, but some of the smaller guns were used; which ones I am not able to specify.

80. Question. Don't you think it quite likely that some of the guns and mounts mentioned in class 22 came from the disabled vessels?

Answer. It is quite possible that some of the smaller guns—some of the 6-pounders—it is possible that the two 6-pounders may have been removed from the vessels mentioned.

81. Question. Do you find anything else in class 22, on page 22, that you think likely could have been taken from such ships?

Answer. No, sir; I find nothing that I could reasonably assume was taken from those vessels.

82. Question. Do you find anything in class 23?

Answer. No, sir.

83. Question. In class 24?

Answer. No, sir.

84. Question. In class 25?

Answer. No, sir.

85. Question. Or class 27?

Answer. No, sir.

86. Question. Now, how about that cutter there on top of page 26?

Answer. I think that was taken from the navy-yard; but some of those boats belonged to the *Manila*. The others were lying at the navy-yard.

87. Question. How about the launches?

Answer. As far as I know, they all belonged to the navy-yard. Some of them were afloat and others were on the ways.

88. Question. Can you specify which were on the ways?

Answer. No, sir; I can not.

89. Question. How many were on the ways?

Answer. I can't specify that, either. There are seven launches mentioned, and if they were on the ways they were there for the purpose of temporary repairs or storage.

90. Question. How about the *Barcelo?*

Answer. She had been equipped—roughly equipped—for torpedo service, and was moored near the navy-yard when she was seized.

91. Question. Moored in berth, you mean?

Answer. She was; I am not clear how she was tied at the moment she was seized, but she was near the navy-yard somewhere.

92. Question. Was she at that time in a condition to be used, or did she have to be put in order?

Answer. Oh, she was entirely in condition to be used.

93. Question. How about the *Cavite?*

Answer. I think I remember her in use within three days from the 1st of May. She was not as good a vessel, but she was ready for use.

94. Question. Was she moored up, too?

Answer. Yes; I am not clear as to the fashion or manner in which they were tied up, but they belonged to the navy-yard equipment, and the *Barcelo* was armed and equipped as a torpedo boat.

95. Question. Was the *Cavite* ready for use at the time she was captured?

Answer. The *Cavite?* Yes; she was ready for use.

96. Question. How about the *Callao?* How was she taken?

Answer. She was captured by firing on her and requiring her to surrender. Isn't there some mistake about this, "*Callao* valued at four thousand?" It is forty thousand, I am sure. She came in ignorantly, and encountered the fleet and surrendered. That was after having fired on her.

97. Question. Now, do you see anything else in class 28 that was likely to have been taken from the ships sunk or disabled in action? I call your attention particularly to those things embraced just after the *Rapido?*

Answer. I think all those things belonged to the equipment of the prizes or were removed from the navy-yard.

98. Question. Do you find anything there that could have been taken from the *Don Juan de Austria*, or the *Isla de Cuba*, or the *Isla de Luzon?*

Answer. There are things there that might have been taken from them, but I have no reason to suppose they were.

99. Question. You know whether they were or not?

Answer. There is nothing there that I know was taken from those vessels.

100. Question. On the next page, same class, do you find anything there?

Answer. Nothing.

101. Question. Class 29—do you find anything there?

Answer. No, sir; I am quite sure that there is nothing in that.

102. Question. I suppose there is nothing in class 30 or in class 31? It seems to be blacksmiths' tools more than anything else—grindstones,

hammers, and mallets. Do you find anything in any of the remaining classes which you think might have been taken from such ships?

Answer. I do not. I think I ought to say that my reason for thinking that articles were not removed from those ships is because no orders were given or measures taken to remove articles from those ships, and I may say further that they were freely plundered by the Filipinos.

104. Question. Had the *Austria* and *Isla de Cuba* and *Isla de Luzon* been raised at the time you took possession of the arsenal?

Answer. No, sir; they were raised some weeks later.

105. Question. Can you tell me about what the date was that they were raised?

Answer. I could not. I remember the time it was going on; it was either in August or September—I should think in September.

106. Question. After they were raised they were placed in charge of officers of the Navy, weren't they?

Answer. They were in the hands of contractors at the time they were raised. The contract for raising them required them to be raised and carried to Hongkong for repairs. The operation of raising them was superintended by Mr. Capps, naval constructor, and he was generally in charge of the work of seeing the contract executed. Of course the vessels, while in temporary repair at Cavite, were guarded by the squadron, but they were not supplied with permanent crews or detailed officers, for they were unfit for service.

107. Question. They were sufficiently guarded by officers and men of the Navy to prevent their being plundered?

Answer. Oh, yes; a vessel was stationed at the navy-yard with special orders to see that no injury was done to public property in that vicinity.

108. Question. Whatever was found on these vessels became the property of the United States—was appropriated, was it not?

Answer. Whatever was found when they were raised?

109. Question. Yes.

Answer. I think so. Of course, all movable parts of the vessels were badly damaged by submersion.

110. Question. Do you know whether there was any report made of what property they contained?

Answer. I know of no such report. I doubt if such a report was made, because the terms of the contract were such that the Government would have had very little—would have gained nothing—by attempting to repair and restore the old equipment.

111. Question. There was nothing in the contract which gave any material on board of them to the contractors, was there?

Answer. I don't know. I have never seen the full terms of the contract, and don't know whether they took it or not. They were to deliver the vessels completely equipped for service. That was the terms of the contract. Whether they did that by taking the old equipment, or furnishing new, I don't know.

Mr. GORMAN. That is all.

C. G. CALKINS.

Affirmed to and subscribed before me this 5th day of September, 1900.

ALFRED C. GOLDNER,
Notary Public in and for the City and County of San Francisco, State of California.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

I, Alfred C. Goldner, a notary public in and for said city and county and State, do hereby certify that on the 24th day of August, 1900, I was attended by William B. King, esq., of counsel for the libellant, and by George H. Gorman, esq., special attorney for the United States, and by witness, and that said witness's affirmation having been first duly taken, he was carefully examined in my presence and the deposition made by him was reduced to writing by Grace S. Shephard, a competent amanuensis in shorthand, and transcribed by her from said shorthand notes so taken, and said witness after carefully reading same subscribed the same, after having made the corrections indicated thereon.

And it was at said time stipulated by and between the respective counsel as follows:

It is hereby stipulated by and between the counsel aforesaid, here present, that all objections are waived in regard to the official character of the appointment of the officer before whom this testimony is taken, and all other objections not specifically appearing on the record thereof, and it is agreed that the deposition may be taken in shorthand by the amanuensis above-named in the manner herein described.

In witness whereof I have hereunto set my hand and affixed my official seal this 5th day of September, A. D. 1900.

ALFRED C. GOLDNER,
Notary Public in and for the City and County of San Francisco, State of California.

Deposition of Eugene D. Ryan on behalf of libellant, taken at Mare Island, Cal., August 27, 1900.

STATE OF CALIFORNIA,
County of Solano, ss:

Be it remembered that on the 27th day of August, 1900, I, Jenkins A. Fitzgerald, a notary public in and for said county, did cause to appear before me at the paymaster's office on the United States receiving ship *Independence* at Mare Island, Cal., Eugene Dewey Ryan, to testify on behalf of the libellant in the cause aforesaid, now pending in the supreme court of the District of Columbia, and the said Eugene Dewey Ryan, being duly sworn to testify the truth, the whole truth, and nothing but the truth, did thereupon testify as follows:

EUGENE DEWEY RYAN, having been duly sworn, testified on direct examination by William B. King, esq., attorney for libellant, as follows:

1. Question. State your name, age, and present occupation.

Answer. My name is Eugene Dewey Ryan, paymaster United States Navy, paymaster United States receiving ship *Independence*, Mare Island, Cal. My age is 30 years.

2. Question. How long have you been in the Navy?

Answer. I have been in the Pay Corps of the Navy since the 29th of July, 1892. I was naval cadet in the Navy from September 5, 1886, to the 18th of February, 1890, about eleven years and a half altogether.

3. Question. Where were you on duty in May, on the 1st of May, 1898, and subsequent months?

Answer. The 1st of May, 1898, I was the paymaster of the U. S. S. *Concord* at Manila Bay; took part in the battle of Manila on that date. After that, until the 15th of September, I was on duty on board the *Concord*. The 15th of September, 1898, I was ordered to temporary duty as paymaster in charge of stores at the Cavite naval station. Upon the 1st of October, 1898, I received orders from Admiral Dewey as the paymaster in charge of the stores of the navy-yard, Cavite, Philippine Islands.

4. Question. How long did you continue on that duty?

Answer. I was on that duty until May of 1899.

5. Question. And then returned to the United States?

Answer. No.

6. Question. What was your duty then?

Answer. In May, 1899, I was relieved as general storekeeper by the late pay inspector, George H. Griffing, United States Navy, who assumed the functions of general storekeeper, and I retained my duties as paymaster of the yard and commissary of the navy-yard.

7. Question. How long did you stay there on that duty?

Answer. I stayed there until the 16th of September, when I relieved the late Pay Inspector Griffing of his duties as general storekeeper.

8. Question. And how long did you remain on that duty?

Answer. Until the 24th of November, 1899.

9. Question. What did you do then?

Answer. Then I was ordered—in accordance with a medical survey—I was ordered to the Mare Island Hospital for treatment. On completion of my treatment at the naval hospital here, I was granted six months' leave of absence, sick leave of absence. On the 10th of this month I was ordered to this ship.

10. Question. When you were assigned to duty at the Cavite naval station in September, 1898, state, in general, what you found on shore there in the way of Spanish supplies.

Answer. In general?

11. Question. Yes.

Answer. You don't mean an itemized statement?

12. Question. No; only in a general way what you found.

Answer. Naval stores and material.

13. Question. Of different classes?

Answer. Of different classes. A couple of classes identified in our schedule here as "Naval stores and material."

14. Question. Have you made any effort to reach a detailed estimate of the stores and materials you found on shore at that time?

Answer. Yes, sir; I have a list here which I have taken from another list that has been furnished, but I have not put down quantities, for the simple reason that I thoroughly agree with the person who got up that list; I agree that it is not safe to put down quantities.

15. Question. One of those lists is the memorandum of stores at the Cavite naval station prepared by Lieut. Commander Reynold T. Hall, already in evidence in this case, is it not?

Answer. Yes, sir.

16. Question. Please state the method which you used in arriving at these conclusions.

Answer. The method by which I reached my conclusions is my familiarity with the stores in the yard at the time I was ordered there and from my experience in handling them afterwards.

17. Question. Please look at the ten sheets of paper which I now hand you, containing lists of stores, and tell me what that is.

Answer. It is supposed to contain the stores contained on the first floor of building No. 1—storehouse No. 1. I am perfectly familiar with the stores in that storehouse, because that is where my first office was.

18. Question. What are the other sheets?

Answer. I had all those storehouses and am perfectly familiar with the stores that were in them. They contain the stores all the way from buildings No. 1 to No. 26.

19. Question. By whom were those sheets prepared?

Answer. These sheets were prepared by myself.

20. Question. Please state how you prepared them.

Answer. I prepared them from the list of material as furnished by Lieutenant Commander Hall and from my own personal knowledge as general storekeeper.

Mr. KING. These sheets are now introduced in evidence and marked "Exhibits 1 to 10, E. D. R."

21. Question. Taking up the first sheet, which you have headed "Building marked No. 1, first floor," please state whether you have personal knowledge of the presence at the yard of all the articles which you have named on that sheet.

Answer. I have personal knowledge of that to the best of my recollection and belief and my familiarity with the storehouse.

22. Question. Comparing that with the list of Lieutenant Commander Hall, state whether you remember the articles named by him which do not appear on your sheet.

Answer. "Portable forges, fire tools, two ship's galleys, building marked No. 1, first floor;" I have no recollection of having seen them, or "ship-carpenter's tools."

23. Question. How many tons of hemp hawsers were there, in your opinion, at that building?

Answer. In my opinion there was 25 tons.

24. Question. Do you know—do you remember any other articles in that building besides those which Mr. Hall has enumerated?

Answer. Yes, sir.

25. Question. Please state what you do remember.

Answer. In addition, in the line of hawsers we could add there about 500 pounds of wire rope—steel wire rope—about 3 inch.

26. Question. Can you state the value of that wire rope?

Answer. It is worth 20 cents a pound. Then we had also on the first floor, that he has left out, about 2,000 pounds of ships' leads. Those are of all sizes. Ships' leads that are used to tell the depth of water, in sounding going into port. There was quite a quantity of them there. In fact, I think 2,000 pounds is a very conservative estimate. The lead is worth 6 cents a pound in that shape. That is all I have to say for that.

27. Question. What can you state in regard to the value of the articles as given by Mr. Hall, which are also included in your list?

Answer. From the investigations that I have made and people that I

have consulted I think his estimates, if anything, are below the correct ones—what it should be.

28. Question. Proceeding now to the second floor of the same building, what can you say in regard to the articles there?

Answer. Plumbers' supplies and tools, 22 sections of suction hose, 3-inch, 2 enunciators, 8 binnacles, brass, 60 sheets of asbestus paper, 4 hand billy pumps. I don't remember at all.

29. Question. Do you remember anything else additional?

Answer. I have added to Mr. Hall's list 11 sets of taps and dies—English standard, $440; about 200 rolls of tar paper, 15 bales of asbestus, 4 ship-steering wheels, 1 water tank—new, 600 pounds of bonote.

30. Question. Please state the values of those different articles.

Answer. The tar paper is worth about $30, the asbestus about $5 a bale; steering wheels, $408; water tank, $400; 600 pounds of bonote, 12½ cents gold a pound.

31. Question. What have you to say in regard to Mr. Hall's values as affixed to the articles in that building?

Answer. They are very reasonable. In regard to his article of 8 binnacles, I can remember 2 when I arrived there to take charge. In relation to the medical stores, there was quite a number of splints, test tubes, bottles and vials. His estimate of $100 I think is very conservative, because the quantity of bottles, vials—medical bottles and vials—that they used there were ample enough to make $100.

32. Question. What would you estimate as the total value of the medical supplies there?

Answer. The splints were old fashioned and no good; the test tubes, some of them I issued to the engineer. I had about 50 test tubes, some worth $1.50 and some $2.50—10, 12, or 14 of them. They were not, of course, medical test tubes. We used them in connection with engineering. They were used for engineering purposes.

33. Question. Proceeding now to the building marked No. 2, what have you to say as to that?

Answer. I remember 1,000 pounds of assorted paint, 300 pounds of tallow, 500 pounds of iron nails, spikes, bolts, and screws, assorted sizes, 10 kegs of boiler rivets, 10 coils of 2-inch wire hawsers in lengths.

34. Question. Do you remember any other articles in that building on the first floor which Mr. Hall does not enumerate?

Answer. Fifty pounds of mercury.

35. Question. What value were they?

Answer. I am not familiar with the value of mercury. Mercury was an after consideration.

36. Question. Proceeding now to the second floor of that building.

Answer. I wish to state in connection with those articles that I have enumerated that there were more of those things there than Mr. Hall has estimated. There were more when I got there.

37. Question. Can you give any definite idea as to how much more of each class?

Answer. "Five hundred pounds of iron nails, etc.," if anything, should be 2,000 pounds, and as for boiler rivets, the common boiler rivets there might be 100 kegs. There was a considerable quantity stored there that we kept on issuing right along.

38. Question. Proceeding now to the second floor of the same building, what have you to say as to Mr. Hall's estimates, either in the way of diminishing or adding to them?

Answer. "Five hundred pounds of heavy rubber sheets" I don't remember. In connection with the last article that is mentioned in building No. 2, second floor, I remember a lot of brooms, brushes, glass, rubber tubing, boat awnings, and various carpenter's and ship fitter's tools.

39. Question. You don't remember the china ware, crockery, and household furniture?

Answer. No, sir.

40. Question. What have you to say in regard to the valuation of the property in that building?

Answer. They are very conservative, to say the least.

41. Question. You mean as made by Mr. Hall?

Answer. Yes, sir.

42. Question. What statement can you make in regard to building marked No. 3?

Answer. Nothing whatever; that was cleaned out before I got there.

43. Question. What can you state in regard to building No. 4?

Answer. In relation to the 400 sheets of iron, corrugated, galvanized for roofing, 10,000 pounds tube iron and brass, assorted sizes, 50 tons of sheet-iron bulkhead of assorted sizes, I have always been under the impression and am still inclined to believe that in regard to the corrugated iron and the sheet iron it is entirely correct, and if anything is a little bit less than the quantity that was in there. The Belleville boiler, 200 tons of iron and steel, search light and the common and armor-piercing shells, and 1,000 pounds of lead are entirely within my knowledge. I am perfectly satisfied that they were all there and recall them.

44. Question. The tin you do not remember?

Answer. The 1 ton tin and pigs and sheets I do not remember.

45. Question. What have you to state——

Answer. I have heard it expressed that in relation to the number of shells that 5,000 is not sufficient number.

46. Question. What is your own judgment on that subject?

Answer. My own judgment on the subject is that 5,000 is about the proper quantity, but as that didn't exactly come under my immediate supervision, I am unable to state positively anything further.

47. Question. What have you to say about the valuation of the goods?

Answer. The valuations are good market values and a little bit conservative, as I said before.

48. Question. Did you ever make any valuation of the total quantity of goods in that building with an effort to fix the value of what was in the building on the first floor?

Answer. In relation to building marked No. 4, first floor, when I was first ordered to the navy-yard, Mr. Dunn, assistant engineer at that time in the Navy, an assistant of the chief engineer and myself, investigated the storehouse, he for technical purposes, to aid me in technical purposes, and myself to arrive at the value of the material in that storehouse, and what particular value it would be to the chief engineer of the yard, so as to get the stores all together. And after he made an examination of the

place, of this particular storehouse at least, he estimated that the value of the material there was about $80,000.

49. Question. Did that include the shell?

Answer. No, sir; the shell was not stored in that part. A little back room off the storehouse was in that space in there [indicating on the map]. The shells were in there.

50. Question. Did you join with him in making this estimate?

Answer. I did, but at the time everything was of course verbal. We didn't—as far as I know—we didn't use any figures in the matter except verbal figures. No figures were there presented.

51. Question. What was your own judgment as to the value?

Answer. My own judgment from what he told me of the quantity of bronze, copper, sheet metal, zinc, and everything in there, we discussed it, and it appeared to me very strongly that it is entirely in accordance with what is there of the value of the articles.

52. Question. What I would like to know is whether that estimate of $80,000 was Mr. Dunn's alone or whether it was your estimate after you had completed the examination in consultation with him?

Answer. That estimate was principally by himself. Of course we went in this storehouse—there was quite a number of racks there, iron, steel, copper, bronze—we went from rack to rack, counted the number in each rack, figured on the weight of each piece of copper, each piece of bronze, etc., and then arrived at that conclusion.

53. Question. Proceeding now to the second floor of the same building, what can you state in regard to that?

Answer. Passing buckets were there; sponges were there; powder tanks; tompions; that is about all that I can remember of that. The only thing that would be worth anything in there of the material that I have enumerated would be the powder tanks, because they were made of copper. They would be worth just the market value of the copper—about 16 cents a pound. I can not form any estimate at all of the articles, except that in that second floor, when I eventually cleared it out of all the trash that was in there, we took out about fifty capstan bars. I think they are worth $25 each.

54. Question. Proceeding now to building No. 5, please state what you know about those articles.

Answer. "Four hundred sheets of galvanized iron corrugated for roofing, 10 tons of scrap iron." I do not remember.

55. Question. Do you remember the other articles in that building?

Answer. "Three heavy hemp hawsers, 1 breech-loading rifle, unmounted, 1 ton of zinc, pigs and slabs."

56. Question. Those you remember?

Answer. Remember perfectly. "Seventy tons of sheet iron and steel, assorted sizes." I remember a good part of that, but not 70 tons.

57. Question. How many tons would you estimate?

Answer. I would estimate that without hesitation at about 35 tons. Iron bars and copper pipe and tubing, about 3 tons. Five tons of brass and copper, wrought iron round, assorted sizes; I remember about—altogether—about a ton of it.

58. Question. What do you think about the values as stated by Lieutenant-Commander Hall?

Answer. His values are conservative and approaching the market price.

59. Question. Proceeding now to building No. 6, what can you say in regard to that?

Answer. Nothing whatever about it.

60. Question. Can you give any reason why you have no knowledge in regard to that building?

Answer. The stores—building No. 6 is a machine shop; whatever stores were in there were under the charge of the chief engineer. I had no opportunity to know anything at all about that, as that was peculiarly his own duties at that time—up to the time of the regular establishment of the navy-yard, of the general storekeeper system. Whatever was in the machine shop when I assumed charge of the general storekeeper's department in the navy-yard at Cavite had nothing whatever to do with me at that time. I only assumed charge of the stores that were in the buildings over which I had control. Whatever other departments had they kept, and I had nothing to do with it; but after that, when a regular system was followed, stores were issued or stores were purchased and everything came within my cognizance. That is the reason I know nothing whatever about the articles, the materials and stores in the machine shop, building No. 6, building No. 7, building No. 8, blacksmith shop, building No. 9, building No. 10, boiler shop, building No. 11. In relation to No. 11, I would like to state that prior to my being ordered to the navy-yard on duty, the 15th of September, 1898, I am firmly convinced, in fact, am positive, that there was one steam fire engine in that building. I am absolutely positive on that subject. There was one hose rack, but as to the number of feet of hose I can't say, but I know there was fire hose— an ordinary amount of fire hose for a fire engine.

61. Question. How do you know that the engine, reel, and hose were there?

Answer. By personal inspection.

62. Question. You had been on shore before you were ordered on shore?

Answer. Yes, sir; quite frequently.

63. Question. Do you know anything about what those were worth?

Answer. The fire engine was worth just what it is put down here. And in addition to that on the next page you have "fire buckets." There were a number of fire buckets there, leather fire buckets—how many I don't know—but all to show that the Spaniards had a regular fire department in that building. It was supposed to be perfectly equipped.

64. Question. What have you to say in regard to building marked No. 13?

Answer. In relation to building No. 13, the stores contained therein, I remember iron rails, a large quantity of cement, a large quantity of lime, a large quantity of rosin. It was quite a large storehouse and quite a quantity of material in it—I should imagine about 10 tons of iron rails, 50 barrels of cement, and 300 or 400 bushels of lime, and 5 barrels of rosin, when I arrived there between the 15th of September and the 1st of October.

65. Question. What do you know in regard to the values?

Answer. Values? My estimate is practically what Mr. Hall's is.

66. Question. What have you to say in regard to building marked No. 14?

Answer. In building No. 14 I have a dim recollection of a lot of patterns for ship's use. In that building was stored a considerable quantity of lumber, cut and sized for the purpose of building a house in the navy-yard at Cavite. The building of that house was contemplated by the Spaniards before our arrival. Of the lumber there was about 5 cubic meters. In addition to that there were tiles—a complete assortment of tiles—also to be used in connection with the construction of that house, about 2 feet square.

67. Question. What would you estimate to be the value of that material for the construction of the house?

Answer. Five cubic meters I should estimate at about, in United States gold—about $60 a cubic meter. There were at least 1,000 tiles there, 2 feet square, black and white marble, which I imagine were worth about 40 cents apiece. There was also a lathe for wood working, one of which you might almost call it a sister lathe to the one they used in the navy-yard, worked by hand.

68. Question. Could you estimate the value of that?

Answer. Fifty dollars. Four or five carpenters' and joiners' benches about 16 feet long, $20 apiece. That is all in that. Fifteen is the foundry. That also comes under the category of the machine shop, in charge of the engineer.

69. Question. At the place marked No. 16, alongside of the west wall, what have you to say in regard to that?

Answer. In relation to the fire brick and the red brick, I know that building was going on in the navy-yard under the direction of the carpenter, and no brick was bought by myself, I being the purchasing officer, and naturally I having seen some brick there, there must have been some kind of brick; what kind I don't know. I didn't buy any brick until some time after I got there.

70. Question. Can you make any statement in regard to the value of the brick?

Answer. Brick cost out there about $3.50 a hundred, Mexican money, and $5 a hundred, depending upon the state of the market, all Mexican money, which you would have to approximate in our money. Mr. Hall's estimate of that red brick is a little bit high.

71. Question. Is the fire brick any different?

Answer. Fire brick costs more; costs from 12 to 14 cents a brick, which makes his estimate very low. That is what we had to actually pay for it.

72. Question. When you say 12 to 14 cents a brick, you mean Mexican money, do you?

Answer. Mexican; that means from 6 to 7 cents.

73. Question. In all your other statements here in regard to prices, do you mean Mexican or American?

Answer. Until just now I have always meant American.

74. Question. What have you to say in regard to the property on the lot near by, marked No. 17 on the map?

Answer. To the best of my knowledge and belief there was a considerable quantity of timber in the navy-yard, but I am not prepared to make any statement in connection with this timber that he enumerates here, except in so far as values are concerned.

75. Question. What can you say as far as values are concerned?

Answer. Fifty thousand cubic feet of timber would be 600,000 lineal feet; a cubic foot contains 12 lineal feet, and the quotations that I always have received from dealers in Manila and Cavite in purchasing wood have varied from 50 to 75 cents a cubic foot. Fifty thousand cubic feet of timber would cost more than $5,000, if we had to buy it. I have estimated it at $10,000. Fifty thousand cubic feet at 60 cents Mexican money would be $30,000. Divide that by 2, about the current American rate, is 25 to 29; a fair estimate would be $10,000. If we could get that lumber at that price we would be very fortunate.

76. Question. Did you have to purchase much lumber while you were there?

Answer. Millions of feet.

77. Question. And what would you consider a fair average price for a cubic foot?

Answer. As I have said before, a cubic foot of lumber in the price lists furnished me would vary from 37½ to 90 cents, so I have estimated a fair value per cubic foot of lumber—that is, native timber, I mean—at 60 cents a cubic foot of Mexican money, or about 29 cents United States gold. I have paid considerably more for lumber than what I have given here. After the insurrection broke out, the 4th of February, 1899, no lumber could come in from the interior, and consequently the price of lumber rose to big figures.

78. Question. Is the price which you have estimated this on a price of lumber based on the prices of lumber after the insurrection or before?

Answer. Before the insurrection; and from my knowledge of Philippine lumber of the kind this is, I found in the carpenter's shop at the navy-yard at Cavite a statement of the prices of lumber that were being paid by the Spanish Government before the American occupation—long before—that were paid by the Spanish authorities.

79. Question. What did those show?

Answer. They were very near this estimate of mine. My estimate is very little beyond. Some lumber I have bought cheaper than the Spanish authorities were buying then.

80. Question. As we are now on the subject of lumber, please state in regard to the lumber designated by Mr. Hall in the building marked No. 19.

Answer. As to that quantity of lumber there I don't know. I don't know that that quantity was there, but as I said before, I know there was a considerable quantity of lumber in the navy-yard, and lumber was used for a long time before I started to buy it. The estimate would be forty thousand instead of twenty thousand.

81. Question. Referring now to building marked 18, what can you say in regard to that?

Answer. No. 18? Nothing whatever, except that I heard there were torpedoes there.

82. Question. But you have no knowledge of it yourself?

Answer. None whatever.

83. Question. What about building marked 18½?

Answer. Just that I had a sort of general knowledge that there were those gun cartridges there.

84. Question. What can you state in regard to building No. 20?

Answer. Well, nothing whatever, sir. That was entirely under the control of the engineer. I don't think I ever was in it; just passed it.

85. Question. What can you state in regard to building No. 21?

Answer. There were two steam launches in the carpenter shop which I learned afterwards from the engineers there had been fitted up. The deck house I know was there, because I saw that. I not only saw that frequently after the 1st of May, when I went there, but I saw it very nearly up to the time when I reported for duty at Cavite. "Carpenter's tools and chests." The carpenter shop was a building where the carpenter's tools were kept. Each carpenter had a set of tools. There were places on each side of the building running about 40 or 50 feet long, and in each one of these places was a set of tools and each carpenter kept his tools there. Besides this, there were the chests. Five hundred dollars would not buy many carpenter's tools and chests.

86. Question. What value would you estimate the carpenter's tools and chests at?

Answer. I put it down at about $3,000, although I have heard it estimated considerably in advance of that.

87. Question. What have you to say in regard to Mr. Hall's estimate of the value of the steam launches and the deck house?

Answer. That is a good estimate; it is all right. Launches were easily worth $2,500 apiece.

88. Question. In regard to building marked 22, what can you say?

Answer. Nothing whatever. That came entirely under the supervision of the chief engineer.

89. Question. What have you to say in regard to the building marked No. 23?

Answer. There was a considerable quantity on this wharf down there. There were three or four storehouses on the place. All kinds of miscellaneous equipments in those. I don't think he has overestimated it a bit. There were several can buoys and about 20 manila hawsers.

90. Question. The torpedoes you do not recall?

Answer. I do not, sir.

91. Question. State your judgment in regard to the value of the various property which you remember in that building in comparison with Mr. Hall's estimate.

Answer. In No. 23?

92. Question. Yes.

Answer. I think his prices are reasonable in a general way. There was such an awful mass of equipment stores there with chain cables and moorings, it seems to me that everything he has said here is very, very reasonable.

93. Question. As to the place marked No. 24 on the end of the wharf, what have you to say?

Answer. There were three large boilers there, marine boilers, old boilers, to say nothing of the quantity of anchors and other things there. There was an awful mass of material there. I can't remember just exactly what it was.

94. Question. What can you state in regard to the paint on the end of point marked No. 25?

Answer. That paint at the end of point marked No. 25 never came under my control. I have always heard that it was in the navy-yard.

95. Question. Do you know anything about the value of paint there?

Answer. Rathgen's paint was $57 a hundred, the price we paid for it.

96. Question. How many pounds were in the can; do you know?

Answer. It came in 5-gallon cans; about 400 gallons according to this estimate of 80 cans; that would make 400 gallons, which would be $6 a gallon.

97. Question. Can you state the value of a gallon of paint of this kind?

Answer. I can not. My own statement would be there are 80 cans of Rathgen's oil paint, each can containing 5 gallons. The 80 cans cost $2,400, which would be $6 a gallon. According to my recollection we paid $57 a hundred pounds for it.

98. Question. Please state what you remember in regard to the property in the building marked No. 21, place being marked 26.

Answer. In relation to the property on lot near building marked 21 and marked 26, I would state that I am under the impression that this does not anywhere near represent what was there. I am firmly convinced that all that is said here was there. In relation to the second floor of No. 4, I happen to note here 60 capstan bars at $600. In building No. 1, first floor, add 4 iron water tanks used, value $600.

99. Question. When you went on duty at the yard, were there any American stores there?

Answer. Yes, sir.

100. Question. Do you recall what vessels had arrived then from the United States with stores?

Answer. The only American stores that were there were the stores that the *City of Pekin* had brought in, and also what the fleet paymaster had bought in Hongkong in his regular trips there.

101. Question. In making your statement in regard to the stores in these various buildings, were you including the American stores?

Answer. None whatever; entirely Spanish stores, formerly the property of the Spanish Government.

102. Question. Will you please give a general statement of the duties of a paymaster in regard to naval stores?

Answer. At every navy-yard there is an officer who is termed the general storekeeper. His duties are to have entire control of all the stores in the navy-yard for their issue, classification, and expenditure.

103. Question. Is the general storekeeper always a paymaster?

Answer. The general storekeeper is always a paymaster.

104. Question. What has such paymaster to do with the purchase of stores?

Answer. When the regulations are fully carried out in regard to a general storekeeper, he has nothing whatever to do with the purchase of stores, but we have in the regulations a regulation which calls for a paymaster in charge of stores, that contemplates a foreign station; a paymaster in charge of stores corresponds to the general storekeeper, a purchasing paymaster and a disbursing paymaster; he would take all of those duties.

105. Question. Was that the position that you occupied?

Answer. That was the position that I occupied; yes, sir.

106. Question. What duties have paymasters in connection with the purchase of stores?

Answer. All stores in the Navy are purchased by paymasters except, of course, the Marine Corps.

107. Question. When you were at the Cavite yard, did your duties include the purchase of supplies?

Answer. Yes, sir.

108. Question. Of what kind?

Answer. All kinds of naval supplies, limited, of course, to the market in Manila.

109. Question. When supplies came from America, what was your duty in relation to them?

Answer. I took charge of them.

110. Question. Did you take them up on your returns?

Answer. I took them up to the best of my ability on the books.

111. Question. When you take up stores of that kind, are they taken by quantity or by value?

Answer. They are taken both by quantity and by value.

112. Question. Was any inventory ever made by you, or by any one within your knowledge, of these Spanish stores?

Answer. No, sir.

113. Question. Did you ever take them up on your books so as to become accountable for them, as you would other stores received from the United States?

Answer. No, sir.

114. Question. Was this Spanish property used for naval purposes.

Answer. Yes, sir.

115. Question. When needed for naval purposes, how was it issued?

Answer. When a head of a department at the navy-yard would send me a little note of request, asking that I would deliver certain stores to the bearer. That is, any head of a department in the navy-yard; officers from ships who saw Spanish material in the storehouses which they could use on the ship were always referred after the 1st of October, 1898, to the commandant. Every officer who received anything, as far as I know, had to sign a receipt for it—initial it or sign a receipt in some shape or form. That was the best possible method we had of keeping accounts at that time. We had no clerks, no clerical assistance to speak of.

116. Question. What became of the orders or receipts for this property to which you have referred?

Answer. They were left among the archives of the storehouse when I left there.

117. Question. Did you find the system which you speak of, of requiring orders and receipts in the manner that you say was the rule after the 1st of October, 1898, in force when you arrived at the yard?

Answer. No, sir.

118. Question. What was done when you first arrived at the yard?

Answer. I imagine that anybody could get anything they wanted, anything they saw that they liked.

119. Question. What plan did you follow from the 15th of September to the 1st of October.

Answer. My plan at first naturally was to become a little bit familiar with the navy-yard and the stores contained therein, and then to adopt some system after the time I would be ordered there permanently as

general storekeeper—some system that we would act upon a regular navy-yard basis, where the responsibility for stores could be shown, and where things could be issued properly and in accordance with regulations as much as possible. You must always bear in mind that we were handicapped by no clerical force. That was my endeavor after the 1st of October to have everything done as near the regulations as possible.

120. Question. Did you make any rearrangement of the stores in the various buildings?

Answer. Yes, sir.

121. Question. What was the object of that rearrangement?

Answer. It was necessitated by stores that were being purchased in Hongkong and stores coming from the United States, and also to segregate the Spanish stores as much as possible in accordance with this system I had adopted. Every piece of Spanish material that went out a receipt was taken for it.

122. Question. During your stay at the yard was it your duty to pay the men?

Answer. Yes, sir.

123. Question. Can you give me any idea as to the number of employees that worked in the yard on an average during the time of your service there?

Answer. The average number I should state at about 1,100—1,100 or 1,200.

124. Question. How would you divide those among the different departments?

Answer. We had about 250 in the engineers'—250 to 300, 300 in the carpenters' force, 400 in the coal gang, and the rest in various things in the yard and the storehouse.

125. Question. Which of those employees would be on work which would require the use of materials?

Answer. The engineers' force and carpenters' force both.

126. Question. Having under consideration entirely the Spanish stores which you found on your arrival at the yard, what proportion of those would you estimate had been used up in April, 1899?

Answer. What proportion of the stores? What do you mean, the proportion of stores in accordance with value or in accordance with quantity?

127. Question. In accordance with value.

Answer. I should say at least seven-eighths.

128. Question. You mean had been consumed in actual use?

Answer. Actual naval work.

Mr. KING. That is all, Mr. Ryan.

Cross-examination by Mr. GORMAN.

129. Question. Did you succeed or precede Mr. Hall in command of the Cavite station, Mr. Ryan, in charge of the stores?

Answer. In charge of the engineering stores which were in buildings under his cognizance. I relieved Paymaster Seibels of provisions, clothing, small stores, and the stores which were received from the *City of Pekin*.

130. Question. When you relieved those gentlemen of those duties

did they turn over to you any list of the articles contained in the various houses at the Cavite arsenal?

Answer. No, sir; except that the stores, the provisions, clothing, and small stores, and the *City of Pekin* stores, although partly under the charge of Paymaster Seibels, were in charge of the fleet paymaster; and when I assumed charge of my department there, or my departments, I signed to the fleet paymaster receipts for the clothing, small stores, and provisions.

131. Question. Were those the American supplies?

Answer. Those are all American supplies.

132. Question. Referring specially and singularly to the Spanish supplies, was there any list furnished to you of those articles when you took charge there?

Answer. No, sir.

133. Question. Were there any memoranda of any sort that you saw or know of?

Answer. No, sir.

134. Question. Did you make such memoranda?

Answer. No, sir.

135. Question. Then, in making up your list of the articles contained in the various houses, you do so entirely from your recollection?

Answer. I do so entirely from my recollection, assisted, of course, by Mr. Hall's list, but especially from my own intimate experience with those stores.

136. Question. Then, in preparing these ten sheets which I have (E. D. R., Exhibits 1 to 10), you had before you as a basis the list of Mr. Hall which has been introduced in evidence in this case?

Answer. I had also my own intimate knowledge of those stores.

137. Question. I say you used Mr. Hall's list as a basis?

Answer. As he has arranged it, by the numbers of those storehouses, that was the easiest way to do it.

138. Question. Would your recollection of what the various buildings contained have been sufficient to have enabled you to make up this list if you had not had Mr. Hall's statement before you at the time?

Answer. I think so.

139. Question. What I want to get at is whether, in the list which you have prepared, you are prepared to say that the articles enumerated therein were actually in the houses designated in your list, from your own knowledge?

Answer. Yes, sir.

140. Question. And that you don't think they were there simply because you saw them on Mr. Hall's list?

Answer. Oh, no, not at all.

141. Question. In the list which you have, Mr. Ryan, I observe that there are no values given.

Answer. Nearly all of Mr. Hall's values are so conservative that I did not at all care to make any corrections in them, except as far as—excepting to put a limit.

142. Question. I understand, then, that except as has been specifically pointed out in your examination in chief, you agree as to values with Mr. Hall?

Answer. Yes, sir.

143. Question. Did you immediately succeed Mr. Hall, or was there some one intervened?

Answer. It appears that I must have immediately succeeded Mr. Hall, because when I was ordered ashore on the 15th of September, 1898, Mr. Hall was still in charge of the department of steam engineering, and Mr. Jones, the officer who was to relieve him, did not relieve him of the engineering duties for some time afterwards.

144. Question. When you first took charge, how were these Spanish stores regarded as to ownership?

Answer. Pardon me, I don't understand your question.

145. Question. I mean, for example, suppose some officer on board the American ships desired some of this Spanish material, how would he proceed to get it?

Answer. When I assumed charge?

146. Question. Yes.

Answer. He would get it by—after the arrangement I had made with the commandant—he would get it by obtaining either verbal or written authority from him. Sometimes the commandant would O. K. simple memorandum sheets of articles which were desired by the officer, and sometimes he would get it by verbal order.

147. Question. When was it, Mr Ryan, that you made this arrangement with the commandant? I mean, how long after you had taken charge.

Answer. I only really took charge of those departments on the 1st of October. From the 15th of September to the 1st of October I was only temporarily relieving Paymaster Seibels. When I understood I was to take charge of them I spoke to Commandant Leutze, and said that it would be better for the future if these stores were issued upon order of the commandant, and not to be given out indiscriminately.

148. Question. Well, prior to that time how were they issued; do you know?

Answer. Prior to that time I do not know positively; I don't know positively.

149. Question. Was there any list of such articles kept after they had been issued?

Answer. All these memoranda of stores issued were left amongst the records of the general storekeeper's office when I left the station.

150. Question. At the Cavite office?

Answer. Yes, sir.

151. Question. Can you state when it was that the supplies arrived from America—that is, on the American ship, the *Peking*, I believe it was?

Answer. Yes, sir; they arrived in July—about the middle of July, I think, sir.

152. Question. Where were they stored?

Answer. In storehouse No. 1, as marked on this list—that is, I mean the engineering stores were mainly stored in storehouse No. 1, first floor, and the provisions and clothing were stored in storehouse No. 1, first floor, storehouse No. 1, second floor, and storehouse No. 2, first floor, and storehouse No. 3, first floor.

153. Question. Were those the same houses and floors in which some of these Spanish materials were?

Answer. Yes, sir.

154. Question. Well, were the American supplies separated from the Spanish stores; and if so, by what means?

Answer. By a system of racks. We had a system of racks in storehouse No. 1 in which all the Spanish stores were kept separate from the American stores. They were kept separate from the start.

155. Question. You are satisfied that there was no intermingling of the two stores?

Answer. Absolutely none; none whatever.

156. Question. Was there a written list of the American stores and supplies taken out by you?

Answer. I received a written list of the American stores from Mr. Hall, and I afterwards signed the invoices as received from the United States for those stores. They were not taken up on any books at the navy-yard—the American stores.

157. Question. Now, in looking over the list of Mr. Hall, you are satisfied that it does not include any of the American stores?

Answer. Absolutely satisfied upon that point. In fact, I took particular pains always to see that they were kept at all times—that they were kept separate.

158. Question. Now, referring to storehouse No. 1, first floor, in list of Mr. Hall you have added 500 pounds of wire rope and various other articles. Will you please state how it is that you remember that these articles were there which are not included in Mr. Hall's list?

Answer. The way these things are securely planted in my mind is on account of the fact that numerous officers, numerous chief and petty officers, numbers of men coming there for stores, would ask me if I had such and such kind of material. It became so well known to me that I would almost know it as well as I would my a, b, c's. Hemp rope was required very, very frequently, and so was steel rope.

159. Question. Take the item of wire rope which you have added to Mr. Hall's list; have you any special recollection of that?

Answer. Very special. I have a special recollection of it as I broke it out. It was in the corner of the left-hand side at the back of the storehouse. There was a lot of hemp hawsers thrown over it, and in rearranging the material there I just put all the hemp hawsers to one side and these two coils of steel hawsers on the other side. That is the way it is impressed on my memory.

160. Question. How do you remember the 2,000 pounds of ship's lead?

Answer. I found that myself. That was stored on the right-hand side of the storehouse, in the rear. There were a number of shelves, and under these shelves, stowed away, were a number of these ship's lead, and I, myself, with four or five men dug them out.

161. Question. How about the asbestus and the tar paper?

Answer. In the rear, upstairs, of storehouse No. 1, in the back was a whole mass of trash and underneath all that trash was found all these packs of asbestus. That I found out subsequently when I rearranged the classification of all the Spanish stores.

162. Question. And the steering wheel?

Answer. There should have been no question about that. They were held up by large sized nails on the walls of the storehouse.

163. Question. Quite prominent?

Answer. Very prominent. They were in the front of the storehouse; as you went up the stairs they were there staring you in the face.

164. Question. How do you account for Mr. Hall's failing to embrace those in his list?

Answer. I don't know.

165. Question. And the new water tank, have you any independent recollection of that?

Answer. I have a very splendid recollection of that, for this reason. In the Philippine Islands we have (the natives have) a boat named a casco, which is used as a transportation boat. That casco, when the sides are calked, can only be calked with one kind of material, and that material is called bonote. And the supply of bonote in Manila ran very short, and I was buying bonote just as fast as the market could turn it out. And we ran short. Mr. Kavanagh, on board here now, he was in charge of the helpers on these cascos, and he ran out of material, or was very low in material to calk them up. So one of the natives around there told me he could find me some bonote. It was incumbent upon me to get bonote, and I went with him and he showed me this bonote in this brand new water tank up stairs. That was full of bonote. So that is why it was impressed upon me. I asked Mr. Hall about this tank, and he sort of recollected it and then he didn't.

166. Question. Did you use it that day that you found it?

Answer. Yes, sir; it was immediately turned over and used.

167. Question. Well, now, in building No. 2, on the first floor, the item of mercury, have you any independent recollection of that?

Answer. Very well, indeed, because that was found underneath one of those four tanks I have mentioned in that storehouse. This mercury comes in an iron receptacle, iron bottle, about that high [showing]. In clearing this place out I found this right underneath the tank. We spilled some of it, the natives spilled half of it on the grass. That is why I only say one-half the quantity it is supposed to contain.

168. Question. Do you know what was done with that mercury?

Answer. I turned it over to the storekeeper when I left as part of the Government stores.

169. Question. The four tanks in building No. 2, first floor; what do you know about them?

Answer. Those four tanks, Mr. Hall says here "300 gallons of lubricating oil." In connection with that lubricating oil is the story of the tanks. Those tanks were fairly well filled with oil when I got there, but afterwards a lot of men must have gotten in there and they turned the faucets on in all of them and the oil ran all over the place and pretty near all the oil was lost. Those are the tanks that are contained in that item. Those tanks were afterwards cleaned out and they are now water tanks in the navy-yard at Cavite.

170. Question. Now, on the second floor, the 40 Spanish speed signals; what do you recollect about those?

Answer. They were all there, and more than that.

171. Question. Do you have any independent recollection of them?

Answer. Every time I went in there I could see them. They were hanging down there.

172. Question. Very conspicuous?

Answer. Very conspicuous, speed signals about that high [showing].

173. Question. Can you tell me about how much those were worth, approximately?

Answer. No, those I can't tell you. Forty speed signals, I imagine as an estimate, anyhow would be worth $300.

174. Question. Well, what can you say as to your recollection of the 50 capstan bars on the second floor of No. 4?

Answer. That used to be the ammunition, or at least the ordnance, shop of the Spaniards. They used to keep the principal part of the gun fittings there. They were there.

175. Question. Have you any special or independent recollection of them?

Answer. Yes, sir, they were all in racks regularly arranged and all on the side of the storehouse.

177. Question. Were they prominent?

Answer. Very prominent. I will change that. I think they were worth $10 a piece. (Correcting answer to question 53, page 10.)

178. Question. Now, the articles embraced in Mr. Hall's list which you do not recall; can you explain why you do not recollect them?

Answer. Possibly, for the reason that they had been used up by the time that I had arrived there.

179. Question. I think I understood you to say that yourself and Mr. Dunn made an estimate of the value of the material—of the value of the stores in house No. 4?

Answer. No. 4, first floor of No. 4.

180. Question. Yes; $80,000, excluding the shells?

Answer. Excluding the shells, yes, sir. That is correct.

181. Question. At the time that this estimate was made, Mr. Ryan, did you make it or did Mr. Dunn?

Answer. Mr. Dunn and myself made the estimate, but he went into it more—into more details than I did. He helped me out in all the technical parts of it. In going over all these racks filled with bronze, copper, brass, out of all the mass of zinc slabs and zinc pigs, we formed the estimate on it simply by a verbal arrangement, nothing that I remember that was ever put in writing.

182. Question. When you would go through the various articles to value them, didn't you put them down in some book or something?

Answer. No, sir.

183. Question. Well, then, how could you remember when you got through what you had seen?

Answer. Well, possibly that is one of the faculties of people to remember things. For instance, we might take 100 rods of bronze, say, that is worth so much; 100 rods or 200 rods of copper, that is worth so much; add that up as we went on. The same way here is brass pipe 10 inches in diameter, weighing so much to the pound or the foot, and so on.

184. Question. In building No. 4, first floor, there is quite a lot of things. Did you remember them all sufficiently well to enable you to make a footing after you got through simply by making calculations of them verbally as you went along?

Answer. I remember the first thing on the left was the Belleville boiler, and after we got a little bit further in the middle of the room was the

mass of sheet copper, sheet steel, sheet copper, then all the racks, bronze and copper bars, brass bars, iron bars. It is on the left-hand side going in. It is all the way down, just one complete mass of iron, copper, brass, steel and iron bars, all in steel racks.

185. Question. Could you remember the estimate that you and Mr. Dunn had agreed on for each article without putting it down in writing somewhere?

Answer. No, sir.

186. Question. Well, then, how did you manage about that? You didn't make any memoranda of the prices?

Answer. Didn't make any memoranda. We took the prices at the regular current price and went through it—prices we both agreed upon.

187. Question. Wasn't that rather a crude way of estimating the value of such material?

Answer. It was all we could do with the amount of clerical force we had under our control.

188. Question. How long did it take you to go through, Mr. Ryan?

Answer. Well, I think it took us about five hours.

189. Question. You wouldn't like to say that, employing that method, that the estimate of $80,000 would be very accurate?

Answer. I would like to say, in fact, I think it was a pretty small estimate. The material was worth more than $80,000, in my opinion, derived from the time of my inspection of the place. The material there we couldn't buy in the place.

190. Question. Now, with reference to the lumber contained on lot marked No. 17, you place the value of that timber at $10,000 instead of $5,000, as shown on Mr. Hall's list?

Answer. Yes, sir; I believe that $10,000 is a very conservative estimate.

191. Question. Was that timber sawed ready for use, or was it in the rough state?

Answer. It didn't make a particle of difference; the price I mentioned was the price of timber in the rough.

192. Question. Was it as a matter of fact in timber or in logs?

Answer. I don't know.

193. Question. Can you tell me how large the logs were, if they were logs? I am referring now to the lot marked No. 17?

Answer. He said "heavy sticks;" then they must have been at least 20 feet long.

194. Question. Have you any independent recollection about that yourself?

Answer. No, sir; the only thing in connection with the wood that I know is from the fact that I didn't purchase any lumber for some time after I arrived there, and from knowing the talk of the carpenters and others at the navy-yard that there was a large quantity of lumber there.

195. Question. Do you remember what kind of lumber it was; I mean what sort of trees?

Answer. No, sir.

196. Question. Do you remember for what purpose it was best suitable?

Answer. No, sir.

197. Question. Well now, with reference to the lot of lumber spoken of as marked No. 19; you put that at double the price given?

Answer. I put that at four times the other; that would be $40,000.

198. Question. In doing that you necessarily assume that it was the same sort of lumber?

Answer. Yes, sir.

199. Question. Do you know whether it was or not?

Answer. I do not, sir.

200. Question. Do you know whether this lot of lumber marked No. 19 was sawed or in the log state?

Answer. I do not; sir.

201. Question. Or what kind of trees, do you know?

Answer. No, sir; I have a recollection now that I remember of a large quantity of lumber being stored in this place there. Whether it is the lumber that he refers to or not I don't know.

202. Question. You have no recollection as to the size of the lumber or the condition of its preservation?

Answer. No, sir.

203. Question. Well, in giving the prices which you have, Mr. Ryan, on lumber, those prices are predicated on the hypothesis that the lumber is sound and in good condition; first-class lumber, I suppose?

Answer. Yes, sir; it would be the kind of lumber I would buy in buying logs.

204. Question. Before it was sawed up?

Answer. Before it was sawed up.

205. Question. Is there no difference in the price of sawed lumber and lumber in the log?

Answer. At first there was a little difference in the price, but afterwards there was no difference.

206. Question. Doesn't it cost a good deal to saw lumber up?

Answer. Yes, sir; costs a good deal.

207. Question. Is not lumber in its finished condition better—worth more—than in its crude state?

Answer. It most certainly is. The Chinamen sawing lumber in Manila would earn about 6 cents an hour, Mexican money. He can earn about $1.50 a day in Mexican money sawing lumber.

208. Question. In the prices which you have given for this lumber, have you given them for lumber?

Answer. Lumber in bulk; that is, logs in the rough, before it is sawed up.

209. Question. Before it was sawed up?

Answer. Yes, sir; great big logs that come right down from the mountains.

210. Question. Well, I suppose those prices are predicated upon the hypothesis that such lumber is first class as to size and condition, free from knots and all that sort of thing?

Answer. You never can tell that in buying lumber in bulk whether it is free from knots, shakes, or anything like that.

211. Question. Don't you inspect it before buying it?

Answer. No; you can't tell anything about lumber. For instance, you can buy lumber in the Philippine Islands; there is a peculiar kind of wood there that is needed very much; it is subject to heart cup; it is hollow in the center; dongom it is called; you ask the natives in order to find out the value of woods in the Philippine Islands; you go to the Spaniards, and then from the Spaniards you go to the native workers in wood,

and they will tell you it is better to buy that kind of wood cut up, because it is soft; it is hollow at the core.

212. Question. Well, you wouldn't buy a lot of lumber unless you had it inspected by some one who was supposed to be a judge?

Answer. Certainly not.

213. Question. Many of these imperfections are observable on the surface, are they not?

Answer. A great many of them are.

214. Question. Nearly all of them are, are they not? An expert worker in lumber in the Philippine Islands could come pretty near telling you whether a log was free from defects, couldn't he?

Answer. No; I don't think he could; not even on the average, except in certain species of wood where it is apparent to anybody that it is rotten; but I mean an apparently good lot.

215. Question. The prices you have given are supposed to be prices for first-class lumber, aren't they?

Answer. Prices of fairly good lumber.

216. Question. In a good state of preservation?

Answer. In a fair state of preservation.

217. Question. Now, referring to the lumber which was contained in house No. 14, with reference to it, I understand you to testify that there was lumber there which had been sawed up ready for building a house?

Answer. Yes, sir.

218. Question. Do you know what was done with that?

Answer. That was afterwards used; the carpenters used every stickof it.

219. Question. For what purpose?

Answer. For repairing; also for building. They used every bit of it; took it all away and used it.

220. Question. Not for the purpose for which it was originally designed?

Answer. No, sir; that Spanish house was never built.

221. Question. In putting it to another use of course the measurements were very different and therefore there was a great deal of loss, was there not?

Answer. We had such a variety of work for it to be used for that the loss was very, very small. Every piece of lumber was used—every piece in the navy-yard. I couldn't buy lumber quick enough or buy enough.

222. Question. In estimating the value, how did you do it?

Answer. On the current rate.

223. Question. So much per yard?

Answer. So much per cubic meter. I think there were 5 cubic meters of that lumber.

224. Question. Without any reference to the dimensions into which it had been cut for this building?

Answer. I never took the dimensions of each piece, you know, and put it down, but you had the dimensions—for instance, a pile of lumber would be of a certain height, and you could very well tell by certain measurements what the number of cubic meters would be, and cubic feet, and so on. That was excellent lumber, the native name was Amagins. It was worth about $120 in Mexican money per cubic meter.

225. Question. I understood you to say that the carpenters' tools in house No. 21 were more nearly worth $3,000 than $500?

Answer. Yes, sir.

226. Question. Can you tell me why you think there is such a large increase there?

Answer. A set of carpenter's tools, in the first place, out there, to say nothing whatever of the actual value, were very hard to get; tools of any good standard make, any hard steel tools, any tools that would stand good work, and all these tools in there were tools which had to stand good work, because all the wood used there is hard wood; the steel would have to be finely tempered. On the left-hand side of the carpenter shop were all these places where tools were kept, a place for each workman to put his tools in, and there were at least forty or fifty of them right along there, and I can, without the slightest hesitation say, to say nothing of the carpenters' chests, that each one of them would be worth from $20 to $75 a set.

227. Question. Your assumption of increase is based more on your idea of increase in price, rather than quantity, over that of Mr. Hall?

Answer. I can say without any hesitation whatever that a set of carpenter's tools—tools that they had out there didn't consist of very many—but I would consider that they would be worth from $25 to $30 a set.

228. Question. Now, Mr. Hall puts these tools at $500, you put them at $3,000. Is that because you think there were more tools, or because you think they are worth more?

Answer. I think he has underestimated the quantity.

229. Question. How about the value?

Answer. He simply says there "a set" or "a number of tools;" but, taking all these sets, that is the way I figure it.

230. Question. You think he didn't estimate all of the tools?

Answer. No, sir.

231. Question. And that he also underestimated the value?

Answer. He estimated the value all right, but when you take "a number" he don't mention what the number is.

232. Question. He doesn't mention what the number is and neither do you. How do you get at the value?

Answer. By the number of sets.

233. Question. Do you know how many sets there were?

Answer. No, sir; just their number.

234. Question. How can you get at any special amount that they were worth if you don't know the number of sets?

Answer. The only way that I can get at it is, you take a set of carpenter's tools—you can easily say that his tools would easily cost you $30 a set, and if there were a hundred sets, which I think there were, at least, for there were more men working then.

235. Question. Your estimate, then, to be correct, must be based upon the hypothesis that there were 100 sets?

Answer. Yes, sir.

236. Question. Then, of course, if you get the number of sets and the value of each you get the total values?

Answer. Yes, sir.

237. Question. Of course, if there were not 100 sets, there would not be that total value?

Answer. No.

238. Question. Why do you think there were 100 sets?

Answer. From personal knowledge; there were so many lockers there; each one had a locker.

239. Question. Do you think there were 100 lockers, 100 chests?

Answer. Yes, sir; easily.

240. Question. Is it not a fact, Mr. Ryan, that when these Spanish stores first began to be distributed that it was done rather loosely? I mean that it was very easy for almost anyone to get what they wanted?

Answer. I am under that impression.

241. Question. Can you tell for how long that continued?

Answer. There was no such thing going on when I was in charge—that stores were so loosely gotten.

242. Question. That was about the 1st of October?

Answer. About the 1st of October.

Mr. GORMAN. I think that is all.

Redirect examination by Mr. KING:

243. Question. You have testified that after the 1st of October your rule was to have written orders or receipts, either from the heads of departments in the yard of what they wanted, or from the commandant for what was required on board ship. Will you tell me whether that practice was universal or whether you made exceptions to it?

Answer. No; I don't think I made any exceptions to that practice. I think it was my universal custom—my general custom—and moreover many officers from the fleet came to me; heads of departments in the fleet came to me for stores, which I refused to give them, referring them to the commandant time and time again.

244. Question. Now, what sort of orders and receipts were those?

Answer. As far as paper was concerned, an order would be scratched upon almost anything. We had no printed forms, except a few.

245. Question. Would they be of the same size and shape?

Answer. Oh, sometimes on large pieces, sometimes on small pieces; sometimes they might be written on an ordinary piece of brown paper.

246. Question. How did you file them when they came?

Answer. They were put on file on my clerk's desk, tied up and put in one of the drawers of his desk and kept there. It was the only method we had. Orders from the head of the department were pasted in a book there—pasted in a book, or transcribed, if we had the time to do it, and a receipt taken.

247. Question. Judging from your familiarity with conditions there, in your judgment would those papers probably remain on file in Cavite? I want your judgment on the subject.

Answer. Do you want my official opinion?

248. Question. As to the fact, what, in your judgment, is the fact as to whether they would remain on file?

Answer. I don't think they would.

249. Question. State why you do not think so.

Answer. I think, owing to the nature of that kind of a receipt, and the method that was pursued by me would not be pursued by the man who succeeded me, would naturally make his subordinates overlook those things and throw them away.

EUGENE RYAN.

Sworn to and subscribed before me this 8th day of October, A. D. 1900.

[SEAL.] J. A. FITZGERALD,
Notary Public.

STATE OF CALIFORNIA,
County of Solano, ss.

I, Jenkins A. Fitzgerald, a notary public in and for said county and State, do hereby certify that on the 27th day of August, 1900, I was attended by William B. King, esq., of counsel for the libellant, and by George H. Gorman, esq., special attorney for the United States, and by the witness, and that said witness, being first duly sworn, was carefully examined, and the deposition made by him was reduced to writing by Grace S. Shephard, a competent amanuensis in shorthand, and transcribed by her from said shorthand notes so taken, and said witness, after carefully reading the same, subscribed the same, after having made the corrections indicated thereon. The following stipulation was entered into by and between the respective counsel:

"It is hereby stipulated by and between the counsel aforesaid, here present, that all objections are waived in regard to the official character or assignment of the officer before whom this testimony is taken, and all other objections not specifically appearing on the record thereof, and it is agreed that the deposition may be taken in shorthand by the amanuensis above named, in the manner herein described."

J. A. FITZGERALD,
Notary Public in and for the County of Solano, State of California.

Memorandum of stores in Carite naval station when plant was started May, 1898.

E. D. R., EXHIBIT 1—G. S. S.

Building marked No. 1.

First floor:

Tons hemp hawsers.
Blocks and falls.
Heavy purchases.
Ship's fittings, miscellaneous.
Coal and ash buckets.
Breakers and scuttle butts.
Small boat anchors and chains.
Two blast blowers.
Two large searchlights.

E. D. R., Exhibit 2—G. S. S.

Second floor:
Side lights.
Lamps and lanterns.
Ship's carpenter's and ship's fitter's tools.
Handspikes.
Capstan bars.
Cork and hemp fenders.
Grapnels.
Shackles.
One fog-siren machine.
Four rolls hair felt.
Three sets bales and cones for long-distance signaling.
Eleven sets taps and dies, English.

E. D. R., Exhibit 3—G. S. S.

Building marked No. 2.

First floor:
1,000 pounds paint, assorted.
300 pounds tallow.
500 pounds iron nails, spikes, bolts, and screws, assorted sizes.
10 kegs boiler rivets, assorted sizes.
4 coils of 2-inch wire hawser, in lengths.

E. D. R., Exhibit 4—G. S. S.

Second floor:
600 pounds asbestos and rubber packing.
500 glasses for side ports.
A lot of brooms, brushes, lamp shades, glass and china ware, boiler gaskets, rubber tubing, etc., household furniture, crockery, boat awnings, various carpenter and ship-fitter tools.

E. D. R., Exhibit 5—G. S. S.

Building marked No. 4.

First floor:
One Belleville steam boiler, complete, new.
200 tons iron and steel, in bars round and square, angle and beam, assorted sizes.
One searchlight and pedestal, complete; lens broken.
5,000 common and armor-piercing shells, approximately 3, 4, 5, and 6 inch.
1,000 pounds lead, in pigs.

E. D. R., EXHIBIT 6—G. S. S.

Building marked No. 5.

First floor:
Three heavy hemp hawsers.
One B. L. rifle, unmounted (4-inch).
One ton zinc, in pigs and slabs.

E. D. R., EXHIBIT 7—G. S. S.

Building marked No. 13.

Yards and docks storehouse:
20 barrels rosin.

E. D. R., EXHIBIT 8—G. S. S.

Building marked No. 21.

Carpenter's shed:
Two steam launches; no machinery; since fitted up.
New deck house.
Lot carpenter's tools and chests.

E. D. R., EXHIBIT 9—G. S. S.

Building marked No. 23.

Storehouse on south wharf:
Lot of miscellaneous equipment stores for *Velasco*, *Bulusan*, and other vessels.
50 tons chain cables and moorings.
Several can buoys.
A lot of rigger's supplies.
Twenty manila hawsers, heavy, on reels.

E. D. R., EXHIBIT 10—G. S. S.

On end of wharf.

Marked No. 24:
Three large boilers, marine.

On lot near building marked No. 1.

Marked No. 26:
Twelve propeller blades, iron or brass.
Three anchors, about 4,000 pounds each.
Four shafts.
Two propellers, about 8 feet diameter.

Report of Navy Department, February 2, 1900, transmitting appraisal.

NAVY DEPARTMENT,
OFFICE OF THE JUDGE-ADVOCATE-GENERAL,
Washington, February 2, 1900.

SIR: Referring to the order of the supreme court of the District of Columbia, issued under date of the 17th ultimo, in the case of George Dewey, Admiral, United States Navy, etc., *v.* The Don Juan de Austria, etc., a copy of a report of the board of appraisal and survey convened on board the U. S. S. *Raleigh*, Cavite, P. I., June 6, 1898, for the purpose of appraising and making careful inventory of the enemy's property captured in Manila Bay, and appropriated to the use of the United States, is herewith transmitted, such copy being duly certified under seal of the Department.

By direction of the Secretary:

Very respectfully,

E. P. HANNA,
Chief Clerk, for Judge-Advocate-General.

JOHN R. YOUNG, Esq.,
Clerk, Supreme Court of the District of Columbia,
Washington, D. C.

REPORT OF BOARD OF APPRAISAL.

[Certificate of Secretary of Navy omitted in printing.]

[Filed February 3, 1900. J. R. Young, clerk.]

Report of a United States naval board of appraisal and survey convened on board the U. S. S. Raleigh, second rate, Cavite, P. I., by order of Rear-Admiral George Dewey, U. S. N., commander in chief U. S. naval force on Asiatic Station.

NAVAL BOARD OF APPRAISAL AND SURVEY,
ASIATIC STATION,
U. S. S. RALEIGH, SECOND RATE,
Cavite, P. I., 11 a. m., Monday June 6th, 1898.

The board met pursuant to an order of the commander in chief.

Present: Captain J. B. Coghlan, U. S. Navy, senior member; Commander E. P. Wood, U. S. Navy, member; Lieut. Carlos G. Calkins, U. S. Navy, member, and Passed Assist. Paymaster S. L. Heap, U. S. Navy, recorder.

The order of the commander in chief convening the board was read. The original is appended marked "A."

The senior member swore the recorder to the faithful performance of his duty as recorder.

The recorder then swore the senior member and other members honestly and impartially to survey, appraise, and take a careful inventory of the enemy's property captured and appropriated for the uses of the United States Government by the squadron under the command of Rear-Admiral George Dewey, U. S. Navy, in Manila Bay, since April 30,

1898, in accordance with section 4624 et seq., United States Revised Statutes.

The senior member addressed a circular letter to the commanding officers of each of the following United States ships, viz: *Olympia, Boston, Baltimore, Concord, Petrel, Callao, McCulloch, Nanshan, Zafiro* and *Manila*, requesting them to have heads of departments of the vessels under their command submit to the board a careful inventory, in duplicate, of enemy property captured and appropriated by them for public uses since April 30, 1898.

The board then, at 11.45 o'clock a. m., adjourned to meet subject to the call of the senior member.

NAVAL BOARD OF APPRAISAL AND SURVEY,
ASIATIC STATION,
U. S. S. RALEIGH, SECOND RATE,
Cavite, P. I., Monday, 2.30 p. m., June 13th, 1898.

The board met pursuant to adjournment.

In response to the circular letter of the senior member inventories in duplicate were received from the commanding officer of each of the following United States ships, viz: *Olympia, Boston, Baltimore, Concord, Petrel, Callao, McCulloch, Nanshan, Zafiro,* and *Manila.*

Inventories in duplicate were also received from the commanding officers of the U. S. S. *Raleigh.*

The board, after deciding to visit the *Manila, Callao,* and other captured vessels, to-morrow, Tuesday, at 9.30 a. m., then at 3 o'clock p. m., adjourned to meet subject to the call of the senior member.

NAVAL BOARD OF APPRAISAL AND SURVEY,
ASIATIC STATION,
U. S. S. RALEIGH, SECOND RATE,
Cavite, P. I., Tuesday, 3 p. m., July 5, 1898.

The board met pursuant to adjournment.

The board completed the appraisement of captured vessels and then, at 3.45 o'clock p. m., adjourned to meet subject to the call of the senior member.

NAVAL BOARD OF APPRAISAL AND SURVEY,
ASIATIC STATION,
U. S. S. RALEIGH, SECOND RATE,
Cavite, P. I., Friday, 2.15, 1898.

The board met pursuant to adjournment.

The board, after examination and approval of the rough copy of the inventory of enemy property submitted to it by the recorder, adjourned at 3 o'clock p. m., to meet subject to the call of the senior member.

NAVAL BOARD OF APPRAISAL AND SURVEY,
ASIATIC STATION,
U. S. S. RALEIGH, SECOND RATE,
Cavite, P. I., Wednesday, August 24th, 1898.

The board met pursuant to adjournment.

The board completed the inventory, in duplicate, of enemy property

captured and appropriated to public use since April 30, 1898, which is appended, marked "B."

J. B. COGHLAN, *captain U. S. Navy, senior member.*
E. P. WOOD, *commander U. S. Navy, member.*
C. G. CALKINS, *lieutenant U. S. Navy, member.*
L. S. HEAP, *passed assistant paymaster U. S. Navy, Recorder.*

The board having completed the survey, appraisement, and inventory of enemy's property it was ordered to make, adjourned at 10.30 a. m. o'clock to await the action of the convening authority.

J. B. COGHLAN, *captain, U. S. Navy, senior member.*
L. S. HEAP, *passed assistant paymaster U. S. Navy, Recorder.*

A.

UNITED STATES NAVAL FORCE ON ASIATIC STATION,
FLAGSHIP OLYMPIA,
Cavite, P. I., June 4, 1898.

SIR: 1. A board is hereby ordered for the purpose of surveying, appraising, and taking a careful inventory of the enemy's property captured and appropriated for the uses of the United States Government by the squadron under my command, in Manila Bay, since April 30th, 1898, in accordance with section 4624 et seq., United States Revised Statutes.

2. The board will convene on Monday, June 6th, at 10 a. m., or as soon thereafter as practicable, on board the U. S. S. *Raleigh.*

3. The report of the board will be made in duplicate.

4. The board will be composed of yourself as senior member, and of Commander E. P. Wood, U. S. Navy, and Lieutenant Carlos G. Calkins, U. S. Navy, members.

5. Passed Assistant Paymaster S. L. Heap, U. S. Navy, will act as recorder.

Very respectfully,
GEORGE DEWEY,
Rear Admiral, U. S. Navy,
Commanding U. S. Naval Force on Asiatic Station.

Captain J. B. COGHLAN, U. S. Navy,
Commanding U. S. S. Raleigh, Cavite, P. I.

B.

Inventory of enemy property captured and appropriated for the uses of the Government of the United States by the squadron under command of Rear Admiral George Dewey, U. S. Navy, since April 30, 1898, in accordance with section 4624 et seq., United States Revised Statutes.

Total amount cash	$2,589.45
Class 1. Anchors, anchor gear, and chains	168.60
" 2. Apparatus and materials, electric	2,074.00
" 3. Bags, boxes, and chests	213.96
" 4. Blocks, &c	806.75
" 5. Bolts, rivets, nuts, lag screws, and washers	141.42
" 6. Brushes and brooms	5.18
" 7. Building materials	31.74

Class 8. Canvas, cordage, and rigging		$5,744.61
" 10. Dry goods		10.50
" 11. Fuel		20,568.13
" 14. Hardware		743.27
" 16. Instruments and apparatus, misc		939.55
" 17. Lamps and lamp fixtures		164.23
" 18. Leather and belting		52.70
" 19. Lumber and timber		166.48
" 20. Machinery and machine tools		1,277.00
" 21. Metals		909.24
" 22. Ordnance materials		42,294.06
" 23. Packing, rubber and hose		1,190.29
" 24. Paints, oils, chemicals, drugs, &c		1,867.29
" 25. Pipe fittings, plumbers' and gas-fixture supplies		719.67
" 27. Provisions		250.76
" 28. Ship and boat equipment		241,566.49
" 29. Stationery, books, and blanks		15.15
" 30. Stoves, galleys, and fixtures		458.30
" 31. Tools		1,082.32
" 32. Miscellaneous stores		90.75
Total amount		326,141.89

Cash.

5,290 dolls. Mexican money	.444	2,348.76	
542.10 Spanish (peso)	.444	240.69	
			$2,589.45

Class 1. Anchors, anchor gear, and chains.

3 anchors	2.66⅔	8.00	
4 anchors, boat	5.00	20.00	
5 anchors, boat	21.00	105.00	
2 anchors, boat	1.25	2.50	
15 fms. chain, boat	.95	14.25	
3 grapnels, hand	3.00	9.00	
3 shackles (galv.)	1.66⅓	4.99	
1 shackle (galv.)		.96	
1 shackle, chain		3.90	
			168.60

Class 2. Apparatus and material, electric.

1 annunciator, engine-room telegraph		200.00	
100 feet bell wire, lead covered	.15	15.00	
2 fronts, searchlight	12.50	25.00	
2 glasses, front, searchlight	50.00	100.00	
2 lamps, searchlight	150.00	300.00	
8 lamps, signal with cable, Ardois	125.00	1,000.00	
2 lenses, searchlight, common	11.00	22.00	
1 projector-plate, searchlight		12.00	
2 reflectors, searchlight	200.00	400.00	
			2,074.00

Class 3. Bags, boxes, and chests.

6 coal bags	.16	.96	
1 chest, ammunition		5.00	
1 chest, blacksmith's, small		10.00	
1 chest, carpenter's		15.00	
1 chest, ice		20.00	
1 chest, mess		8.00	
1 chest, signal		5.00	
1 chest, "		50.00	
1 chest, " (with 20 flags and halliards)		100.00	
			213.96

Class 4. Blocks, &c.

Blocks:			
6 1″	.50	3.00	
50 assorted	8.00	400.00	
29 double assorted	5.62069	163.00	
4 8″	21.00	84.00	
4 iron	3.00	12.00	
2 iron	.875	1.75	
4 iron threefold	12.50	50.00	
4 jin	6.00	24.00	
8 single assorted	1.8611	33.50	
1 snatch 10″		8.00	
2 wooden-purchase 15″	5.00	10.00	
7 sheaves, assorted	2.50	17.50	
			$806.75

Class 5. Bolts, &c.

435 lbs. bolts and nuts, iron, assorted	.09241	40.20	
6 bolts, crank-pin	2.00	12.00	
4 bolts, crosshead	2.00	8.00	
4 bolts, main bearing	2.00	8.00	
4 bolts, soldering	.50	2.00	
3 bolts, ring, small	.40	1.20	
80 lbs. burrs, washers, and nuts, copper	.70	56.00	
24 knob screws	.05	1.20	
20 lbs. nuts, brass	.50	10.00	
10 rivets, boiler	.08	.80	
5 rivets, copper, boat	.30	1.50	
15 rivets, steel	.03466	.52	
			141.42

Class 6. Brushes and brooms.

1 brush, dust		.57	
3 brushes, paint	.66$\frac{2}{3}$	2.00	
24 brushes, paint (small round)	.10	2.40	
2 brushes, scrub	.105	.21	
			5.18

Class 7. Building materials.

20 lbs. bath bricks	.04	.80	
425 lbs. fire bricks	.049412	21.00	
1 bbl. fire clay		7.99	
10 lbs. fire clay	.02	.20	
100 lbs. lime	.0175	1.75	
			31.74

Class 8. Canvas, cordage, etc, ashore.

1 piece awning curtain		3.00	
1 set awning curtains		80.00	
6 awnings, boat	11.66$\frac{2}{3}$	70.00	
1 awning, poop (118 yds.)		30.00	
7 awnings, ship	100.00	70.00	
72 yds. canvas, cotton, No. 2	.20	14.40	
4668 yds. canvas, flax	.258393	1,206.18	
400 yds. canvas (old)	.02	8.00	
4 sets gripes, canvas	3.75	15.00	
4 covers, boat	25.00	100.00	
3 covers, hatch	10.00	30.00	
4 covers, spar	7.50	30.00	
1 cover, wheel		8.76	
1 cover, skylight		11.19	
5 halliards, signal	1.80	9.00	
25 hammocks	2.00	50.00	
450 lbs. hawsers, 3″	.17778	80.00	
1,100 lbs. hawsers, hemp, 7″	.12	132.00	

120 fms. hawsers, hemp, 4½″	.39	46.80
50 fms. hawsers, hemp, 9″	2.60	130.00
500 lbs. hawsers, manila (laid), 6″	.07	35.00
1,286 lbs. hawsers, manila, 7″	.129696	166.79
1,302 lbs. hawsers, manila, 5″	.129	167.96
120 fms. hawsers, manila, 6″	1.12666	135.20
120 fms. hawsers, manila, 5″	.79	94.80
120 fms. hawsers, manila, 4½″	.39	46.80
120 fms. hawsers, manila, 4½″	.39	46.80
50 fms. hawsers, manila, 9″	2.60	130.00
500 lbs. hawsers, manila (laid), 6″	.07	35.00
1,286 lbs. hawsers, manila, 7″	.129696	166.79
1,302 lbs. hawsers, manila, 5″	.129	167.96
120 fms. hawsers, manila, 6″	1.12666	135.20
120 fms. hawsers, manila (new), 4½″	.79	94.80
120 fms. hawsers, manila, 4½″	.52	62.40
120 fms. hawsers, manila, 4½″	.39	46.80
120 fms. hawsers, manila, 3¾″	.29	34.80
60 fms. hawsers, wire, 3″	1.80	108.00
10 lbs. hawsline	.16	1.60
193 lbs. marline	.12709	24.52
30 lbs. ratline stuff	.10	3.00
175 lbs. rope, 3½″	.0714	12.50
300 lbs. rope, bolt	.20	60.00
285 lbs. rope, hemp	.20	57.00
540 lbs. rope, hemp, 5½″ (new)	.12	64.80
810 lbs. rope, hemp, 4½″ (old)	.04	32.40
170 lbs. rope, hemp, 3½″ (old)	.04	6.80
70 lbs. rope, hemp, 2¾″ (old)	.085714	6.00
30 lbs. rope, hemp, 2½″	.1182	3.55
100 lbs. rope, hemp, 2″	.1182	11.82
50 lbs. rope, hemp, 21-thread	.1248	6.24
300 lbs. rope, hemp, 6-thread	.12	36.00
150 lbs. rope, hemp, 3-strand and 15-thread	.11	16.50
20 fms. rope, hemp, 6″	1.44	28.80
60 fms. rope, hemp, 5″	1.00	60.00
120 fms. rope, hemp, 4½″	.80	96.00
30 fms. rope, hemp, 4″	.64	19.20
40 fms. rope, hemp, 3½″	.54	21.60
100 fms. rope, hemp, 3″	.48	48.00
2,138 lbs. rope, manila	.144316	308.55
2,066 lbs. rope, manila, 4½″	.124745	257.72
460 lbs. rope, manila, 4½″	.063478	29.20
660 lbs. rope, manila, 3¾″	.13	85.80
1,507 lbs. rope, manila, 3½″	.123198	185.66
120 lbs. rope, manila, 3½″	.13	15.60
1,290 lbs. rope, manila, 3″	.110457	142.49
381 lbs. rope, manila, 2¾″	.14593	55.60
330 lbs. rope, manila, 2½″	.09727	32.10
850 lbs. rope, manila, 2″	.100152	85.13
64 lbs. rope, manila, 1½″	.09366	5.99
160 lbs. rope, manila, 1″	.05	8.00
124 lbs. rope, manila, 21-thread	.13	16.12
20 fms. rope, manila, wire	.25	5.00
30 fms. rope, manila, wire, 3″ (new)	1.60	48.00
50 fms. rope, manila, wire, 1½″	.36	18.00
150 fms. rope, manila, wire, steel, 1″	.16	24.00
10 lbs. rope, wire, ½″	.09	.90
314 lbs. towline, hemp, 3½″	.11828	37.14
563 lbs. towline, manila, 3½″	.11818	66.54
13 lbs. twine, flax	.35846	4.66
7 lbs. twine, cotton	.62714	4.39
3 wind sails	25.00	75.00
64 lbs. yarn, spun	.1656	10.60
		$5,744.61

Class 10. Dry goods.

10 yds. bunting, blue	.20	2.00	
2 cotton, sewing	2.50	5.00	
2 mats, grass	.50	1.00	
250 needles, sail	.01	2.50	
			$10.50

Class 11. Fuel.

1 bbl. charcoal		1.00	
1,773 tons coal, steaming	11.600186	20,567.13	
			20,568.13

Class 14. Hardware.

2 buckets, coal	4.72	9.44	
5 buckets, deck	1.60	8.00	
1 bucket, iron		.27	
19 cans, oil, assorted	.3526	6.70	
11 feeders, oil	1.25	13.75	
3 funnels, oil	2.92	8.76	
1 roll gauze wire		5.00	
37 lbs. gauze wire	.2973	11.00	
3 heads, boat hooks	2.00	6.00	
14 pairs hinges, brass	.15	2.10	
5 lbs. hinges, small, assorted	.25	1.25	
4 hooks, boat	2.82	11.28	
10 hooks, door, brass	.25	2.50	
12 locks, mortice, brass	2.25	27.00	
40 lbs. nails, composition	.30	12.00	
30 lbs. nails, copper	.181333	5.44	
50 lbs. nails, copper, boat (assorted)	.38	19.00	
10 lbs. nails, iron wire	.02	.20	
10 lbs. nails, iron (galv.)	.05	.50	
105 lbs. nails, wire	.05619	5.90	
30 lbs. nails, steel wire	.10	3.00	
1 pan, drip		6.90	
40 rings (galv.), 1″	.02	.80	
100 lbs. rod, brass	.20	20.00	
25 lbs. screws, brass	.56	14.00	
14 gross screws, brass	.50	7.00	
103 gross screws, brass, l. h	.12155	12.52	
5 gross screws, brass, r. h. (assorted)	.28	1.40	
3 gross screws, brass, $\frac{2}{3}$″	2.10	6.30	
5 gross screws, brass, 3″	4.00	20.00	
2 gross screws, brass, r. h. machine	2.75	5.50	
3 lbs. screws, wood	.80	2.40	
8 gross screws, brass, assorted	.80	6.40	
25 lbs. studs, brass	.20	5.00	
38 lbs. tacks, copper	.2421	9.20	
3 tanks, iron (assorted)	3.00	9.00	
3 tanks, water	70.00	210.00	
277 lbs. wire, brass	.3105	86.00	
15 lbs. wire, brass and copper	.24	3.60	
267½ lbs. wire, copper	.39614	105.97	
1 roll wire mesh		44.19	
40 lbs. wire spring	.20	8.00	
			745.27

Class 16. Instruments, etc.

1 barometer, aneroid		11.00	
6 books, Spanish military	1.00	6.00	
1 set charts Philippine Islands		50.00	
1 clock for cabin		12.50	
1 compass, ship's (Spanish)		85.00	
1 compass, standard. Thomson patent, with compensating binnacle and azimuth telescope complete		250.00	
1 directory of Philippine Islands		2.00	
2 Fant, patent log	1.50	3.00	
1 gauge, testing apparatus		75.00	
6 glasses, log	.83⅓	5.00	
2 glasses, time	1.00	2.00	
1 governor for patent log		3.50	
2 indicators for patent log	2.50	5.00	
1 box instruments, drawing		15.00	
1 set instruments, drawing		4.00	
2 leads, hand (9 lb.) and line	1.00	2.00	
1 lead, line, and reel		6.00	
1 log, patent, and rotator for		7.00	
1 log, chip line, and reel		5.00	
2 peloruses	55.00	110.00	
1 reel, deep sea		4.30	
2 rotators for walkers, log	5.00	10.00	
1 scale and weights, Fairbanks		25.00	
1 pair scales, letters		5.00	
1 scales, spring		8.00	
1 sextant		50.00	
1 sextant, imperfect		20.00	
1 telescope and tripod		150.00	
1 thermometer		2.50	
2 trumpets, brass, speaking	2.50	5.00	
1 trumpet, speaking		.75	
			$939.55

Class 17. Lamps and lamp fixtures.

6 candle stands, brass	.50	3.00	
1 chandelier for candles		1.00	
2 lamps, globe (damaged)	1.00	2.00	
2 lamps, globe	1.50	3.00	
2 lamps, hand	.50	1.00	
1 lamp, signal		1.00	
1 lamp, students'		10.00	
6 lanterns, globe	1.66⅔	10.00	
3 lanterns, hand	1.21	3.63	
2 lanterns, spare	.93	1.86	
14 lights, glass, 18″ x 24″ (heavy)	1.43	20.00	
2 lights, masthead	12.50	25.00	
1 light, riding		10.00	
2 lights, side	7.50	15.00	
3 lights, standing	6.00	18.00	
3 lights, steaming	10.00	30.00	
8 lockets, lamp	.65	5.20	
27 wicks, lamp	.1681	4.54	
			164.23

Class 18. Leather and belting.

3 belts, awl	.15	.45	
1 belt punch		.15	
1½ side bellows, leather	6.4666	9.70	
1 side leather		6.33	
1 leather rigging		3.07	
125 lbs. leather, sole	.264	33.00	
			52.70

Class 19. Lumber and timber.

100 lbs. lignum-vitæ	.0645	6.45	
270 feet lumber (Spanish cedar)	.094	25.38	
1 lot lumber		50.00	
300 feet lumber	.20	60.00	
150 feet mahogany	.1643	24.65	
			8166.48

Class 20. Machinery, etc.

3 brasses, wrist pin	3.00	9.00	
1 differential pulley		5.00	
10 drills, Deam & Print, ⅛ to ¾	.50	5.00	
1 drilling machine		33.00	
1 forge, blacksmith's		35.00	
1 forge, iron		25.00	
4 lbs. gears, 24″ x 30″	2.60	10.40	
1 grab, boiler maker's		2.00	
3 link blocks, spare	3.00	9.00	
4 links, connecting, for A. & C. pump beam	2.00	8.00	
1 plate face		15.00	
1 plunger, bilge pump		10.00	
1 plunger, feed pump		10.00	
1 pump, force and hose		75.00	
2 ratchets, drill	2.25	4.50	
2 rods, air and circulating pumps	5.00	10.00	
1 rod, connecting		12.00	
2 rods, eccentric	8.00	16.00	
43 springs, piston	.50	21.50	
1 set steering-gear strans		800.00	
1 strap, cross head		3.00	
2 straps, eccentric, spare	10.00	20.00	
5 sets taps and dies	17.00	85.00	
20 valves, air pump	.50	10.00	
20 valves, pump, common	.50	10.00	
40 valves, pump, main	.84	33.60	
			1,277.00

Class 21. Metals.

185 lbs. antifriction metal	.18	33.30	
100 lbs. babbitt metal	.17	17.00	
270 lbs. brass	.23092	62.35	
210 lbs. brass, bar	.2143	45.00	
200 lbs. brass, cast	.125	25.00	
180 lbs. brass, finished	.75	135.00	
140 lbs. brass, sheet	.2572	36.00	
450 lbs. bronze	.18	81.00	
275 lbs. bronze, Tobins	.3509	96.50	
75 lbs. copper, sheet	.19	14.25	
75 lbs. iron	.0395	2.96	
70 lbs. iron, angle	.04	2.80	
635 lbs. iron, bar	.037165	23.60	
50 lbs. iron, cast	.04	2.00	
72 lbs. iron, sheet, 1/16	.04	2.88	
28 feet iron, sheet, 1/8 sq	.20	5.60	
1,927 lbs. lead, sheet	.33653	64.85	
100 lbs. magnolia metal	.20	20.00	
3 pieces plates, steel	1.12	3.36	
50 lbs. sheathing, copper	.2988	14.94	
30 lbs. solder	.256	7.68	
62 lbs. steel, bar	.13548	8.40	
6 sheets tin	.1483	.89	
1,050 lbs. zinc	.10	105.00	
450 lbs. zinc for boilers	.05	22.50	
200 lbs. zinc, sheet	.0819	16.38	
33 lbs. zinc slabs	1.8182	60.00	
			909.24

Class 22. Ordnance materials.

Ammunition.

Canister:		
150 for 9 c/m B. L. R.	1.60	240.00
7 for 7 c/m B. L. R.	1.10	7.70
Cartridges:		
144 for 42 m/m	3.50	504.00
1,260 for 37 m/m	1.00	1,260.00
7,010 for 25 m/m	.36662	2,570.00
15,000 for 11 m/m	.0293 1/3	440.00
59,000 for 7 m/m	.03267118	1,927.60
44 for 6 pdr	2.50	110.00
200 for 3 "	2.00	400.00
Fuses:		
44 percussion for 9 c/m B. L. R.	.50	22.00
12 time percussion for 9 c/m B. L. R.	1.00	12.00
Powder:		
150 lbs. black	.20	30.00
250 lbs. rifle (tanks of)	.368	92.00
Shell:		
150 common 9 c/m B. L. R.	3.00	450.00
105 common 7 c/m B. L. R.	1.00	105.00
300 common 37 m/m H. R. C	1.21	363.00
1,080 steel m/m H. R. C	1.87	2,019.60
47 bayonets	1.60	75.20
22 bayonets and scabbards	2.20	48.40
22 bayonet belts	.50	11.00
48 bayonet scabbards	.5875	28.20
48 cartridge belts (with boxes)	4.00	192.00
56 cartridge boxes	2.0142	112.80
2 breechblocks for 6 pdr. H	200.00	400.00
2 breech plugs for field guns 3"	150.00	300.00
1 field carriage (Colt mch. guns)		375.00
3 firing pins 37 m/m H. R. C	3.00	9.00
Guns and Mounts.		
12 c/m B. L. R. Canet, with mounts and attachments, complete		7,000.00
1 9 c/m B. L. R. and mount		1,200.00
1 7 c/m B. L R. and mount		500.00
5 37 m/m H. R. C., complete	970.00	4,850.00
1 25 m/m machine mount and cover		1,525.00
2 11 m/m machine mount and covers	1,500.00	3,000.00
2 6 pdr. H., with mounts	2,340.00	4,680.00
2 42 m/m Nordenfelts, mark A, with mounts	1,650.00	3,300.00
2 25 m/m Nordenfelts, 4 barrels, with mounts	700.00	1,400.00
1 hydraulic recoil mount		150.00
3 springs, main, 37 m/m H. R. C	3.00	9.00
5 passing boxes for powder	2.50	12.50
48 rifles, Mauser 7 m/m	18.57	891.36
74 rifles and slings, Mauser 7 m/m	19.05	1,409.70
4 rifles and slings, Remington	15.00	60.00
1 sight box for 3 pdr		3.00
1 locket pivot		20.00
24 sponges, bristle, complete, with boxes	.50	12.00
37 tanks for powder (small)	2.838	105.00
3 tanks for powder (50 lbs.)	15.00	45.00
5 tompions 8" and 6"	3.40	17.00
		$42,294.06

Class 23. Packing and rubber hose.

50 brass grommets for condensers	.03	1.50	
620 feet hose, rubber and canvas (assorted)	.206452	128.00	
50 hose, rubber, 1¼"	.30	15.00	
1 hose suction		13.00	
62 lbs. insertia cloth	.4194	26.00	
2,108 lbs. packing assto asbestos, rubber, &c	.477604	1,006.79	
			1,190.29

Class 24. Paints, oils, drugs, &c.

10 gals. alcohol	.733	7.33	
5 lbs. muriatic acid	.21	1.05	
327 gals. oils, assorted	.64987	212.51	
10,336 lbs. paints, assorted	.11732	1,212.62	
50 lbs. paints, green, in oil	.095	4.75	
35 gals. paints, patent	2.6858	94.00	
3 cans paints, Rathjens Am. Comp	30.00	90.00	
5 lbs. patent dryer	.10	.50	
5 gals. petroleum	.40	2.00	
7 gals. polish, furniture	.16	1.12	
5 lbs. putty	.02	.10	
25 lbs. rosin	.028	.70	
200 lbs. tallow	.10	20.00	
60 gals. turpentine	.43933	26.36	
45 gals. varnish	1.0633	47.85	
Medical stores:			
2¾ lbs. acacia	.40	1.10	
3½ kg. absorbent cotton	1.062	3.72	
30 gm. bismuth, sub. carb	.011666	.35	
12 bottles, large	.25	3.00	
16 bottles, small	.0625	1.00	
2 doz. bandages, plaster paris	1.75	3.50	
4 doz. bandages, suspensory	.375	1.50	
2 doz. bandages, gauze	1.25	2.50	
1 lot bedspreads		8.00	
25 lbs. cotton	.80	20.00	
60 gm. caffeine	.0445	2.67	
5½ gm. eserine	1.4945	8.22	
2 eye baths	.25	.50	
25 sets fracture splints	1.00	25.00	
2 feeding cups	.375	.75	
2 graduates, 555 c. c.	.75	1.50	
8 M gauze, medicated	.09375	.75	
60 M gauze, bichloride	.10	6.00	
40 M gauze, iodoform	.50	20.00	
1,400 gm. iodoform	.0085	11.90	
6 jars ointment, porcelain, large	.08½	.50	
6 jars ointment, porcelain, medium	.06⅔	.40	
6 jars ointment, porcelain, small	.05	.30	
1 lemon squeezer		.25	
200 cc. myrrh, tincture of	.00125	.25	
180 gm. phenacetine	.0223	4.00	
180 gm. quinine sulp	.01112	2.00	
1 gm. seidlitz measure		.25	
2 pkgs. splints, assorted	1.00	2.00	
1 spittoon		.25	
4 spatulas	.30	1.20	
1 scarificator		5.00	
1 table		7.50	
50 gm. tartar emetic	.0108	.54	
			$1,867.29

Class 25. Pipe fittings, &c.

14 cocks, assorted	.76357	10.69	
12 flanges, brass	.40	4.80	
90 ferrules, condenser	.1533	13.80	
50 ferrules, tube	.23	11.50	
7 gauges, steam, assorted	14.3114	100.18	
6 gauges, vacuum	14.167	85.00	
12 glasses, gauge, water	.125	1.50	
18 glasses, gauge	.345	6.21	
7 glasses, gauge (donkey)	.3442	2.41	
26 feet pipe, brass	.21	5.46	
600 lbs. pipe, copper, assorted	.20	120.00	

100 lbs. pipe, lead, 1¼	.08	8.00	
1,100 lbs. plates, floor	.07	77.00	
25 tubes, assorted	.25056	62.64	
1,000 tubes, condenser	.17	170.00	
22 tube stoppers	1.00	22.00	
16 valves, rubber	.53	8.48	
1 valve, steam, main		10.00	
			$719.67

Class 27. Provisions.

300 lbs. beans	.04	12.00	
250 lbs. biscuit	.051445	12.86	
30 lbs. coffee, green	.25	7.50	
2,000 lbs. flour	.04	80.00	
1,050 lbs. meat, fresh	.06	63.00	
200 lbs. peas, dried	.017	3.40	
4 bbls. pork, salt (U. S.)	18.00	72.00	
			250.76

Class 28. Ship and boat equipments.

1 bell, ship's		10.00
Boats:		
1 cutter (condition fair)		750.00
1 cutter (new)		1,000.00
1 gig and oars		50.00
3 whaleboats	665.52⅔	1,996.57
1 wherry		155.33
1 water; coppered bottom; 35 tons capacity (condition fair)		1,800.00
Launches:		
3 single-screw; comp. engines; cyl. boiler; single furnace	1,500.00	4,500.00
1 30-feet clinker-built; comp. engines		1,200.00
3 steel, 35-feet; comp. engines; cyl. boiler; return tube; single furnace; single screw. Condition A1	4,500.00	13,500.00
1 torpedo, "Bareclo" wood; coppered bottom, single screw; length, 68 feet; breadth, 12½ ft.; depth hold, 6½ ft.; comp. engines; cyl. boilers; single furnace. Condition good		6,500.00
The "Cavite," wood; coppered bottom, single propeller; length, 65 ft.; breadth, 11½ ft.; depth hold, 6½ ft.; comp. vertical engines with one boiler; single furnace; one anchor and two chains. Condition good		5,000.00
The "Callao," a steel gunboat; two screws; length, 119½ ft.; breadth, 17½ ft.; draught, 6 feet and 8.6 inches; displacement, 208 tons; two engines; one boiler I. H. P., 273; capacity of coal bunker, 32.25 tons. Launched in 1888.		40,000.00
The "Consuelo," wood; coppered bottom; single screw; length, 55 ft.; breadth, 10½ ft.; depth hold, 6½ ft.; comp. steeple engines; one boiler, return tube; single furnace; one anchor and chain. Condition fair		3,000.00
The "Hercules," wood; copper bottom; single screw; length, 56 ft.; breadth, 10½ feet; depth hold, 6½ ft.; comp. engines, steeple type; one boiler; single furnace; one anchor and two chains. Condition good		4,000.00

The "Concordia," wood; coppered bottom; single screw; length, 65 feet; breadth, 11½ ft.; depth hold, 6½ feet; comp. vertical engines; cylindrical boiler, return tube; single furnace; anchor and chain. Condition good		5,000.00	
The "Iloylo," wood; coppered bottom; single screw; length, 92 feet; breath, 12⅝ feet; depth hold, 6½ feet; comp. tandem engines; one cyl. boiler; two furnaces; two anchors		6,000.00	
The "Isabel I," paddle wheels; coppered bottom; length, 118 feet; breadth, 18 ft.; depth hold, 7 feet; one engine; one boiler. Condition fair		3,000.00	
Iron hull transport "Manila," single screw; length, 209⅞ ft.; breadth, 29⅝ feet; depth hold, 18½ feet; draught, 14 feet; displacement, 1,900 tons; one engine; 3 boilers (two main and aux.); I. H. P., 820; coal-bunker capacity, 204 tons. Launched in 1883		90,000.00	
The "Leyte," a steel gunboat; twin screws; comp. engines. Condition very good		30,000.00	
The "Mindanao," a steel gunboat; twin screws; comp. engines; cylindrical boiler; two furnaces		15,000.00	
The "Rapido," wood; coppered bottom; single screw; length, 85 feet; breadth, 18 feet; depth hold, 8½ feet; com. tandem engines; one cyl. boiler, return tube; two furnaces; two anchors and chains (fair). Condition good		8,500.00	
1,000 eyelets, awning	.01	10.00	
8 fenders, cork, assorted	2.7675	22.14	
7 fenders, leather, boat	.4457	3.12	
Flags:			
1 ensign, Spanish		5.00	
8 signal, international code	3.125	25.00	
9 signal, Spanish	2.00	18.00	
25 signal, Spanish (private)	4.00	100.00	
2 flagstaffs, small	1.75	3.50	
2 gudgeons	1.75	3.50	
5 hooks, brass	.25	1.25	
5 hooks, boat	1.25	6.25	
72 lights, blue (assorted)	.8056	58.00	
32 oars (assorted)	1.49	47.68	
17 rockets	.25	4.25	
38 rowlocks (assorted)	1.85526	70.50	
7 rowlocks, iron	.50	3.50	
9 rowlock boxes, brass	2.50	22.50	
2 sets signals, international	82.00	164.00	
1 signal book, international		3.00	
1 skylight		5.00	
2 strong backs	2.50	5.00	
50 thimbles, Golod	.10	5.00	
2 tillers, brass	2.00	4.00	
2 yokes, brass	5.00	10.00	
			$241,566.49

Class 29. Stationery, books, and blanks.

3 blank books	.30	.90	
1 bottle ink, red		1.50	
2 inkstands	.375	.75	
1 roll paper, drawing		5.00	
1 " paper, tracing (linen)		3.00	
1 lot paper, writing		3.00	
5 reams paper, writing, plain	.20	1.00	
			15.15

Class 30. Stores, galleys, and fixtures.

34 grate bars	.40	13.60	
900 grate bars	.03½	30.00	
2 sets grate bars, donkey	5.00	10.00	
250 grate bars, main	1.38	345.00	
840 grate bars, wrought-iron	.07	58.80	
2 bar bearings	.45	.90	
			$458.30

Class 31. Tools.

3 adzes	.94⅓	2.83
4 augers	.50	2.00
2 awls, brad	.02	.04
2 axes, handled	1.00	2.00
1 bar, crow	1.00	2.00
21 bars, pinch	1.185761	24.90
1 bar, plain		1.00
1 brace		2.50
4 braces, rachet	2.50	10.00
4 calipers	1.0975	4.39
141 chisels, assorted	.29765	41.97
3 chisels, blacksmith's	.18	.54
1 clamp, heavy		2.00
4 compasses, assorted	.7325	2.93
5 prs. dividers, assorted	.66	3.30
60 drills and chisels	.25	15.00
5 lbs. emery	.08	.40
50 sheets emery cloth	.02	1.00
40 sheets emery paper	.02084	1.00
5 expanders, tube	9.286	46.43
221 files, assorted	.46217	102.14
1 forge		33.45
1 forge, blacksmith's		53.00
1 frame, hack-saw		1.20
1 gauge, surfacing		3.00
2 gauges, trammel	.50	1.00
5 lbs. glass, ground	.066	.33
2 gimlets	.25	.50
3 grindstones	7.60	22.80
25 hammers, assorted	1.016	25.40
54 hammers, ball-peen	.50	27.00
4 hammers, coal	1.00	4.00
3 hammers, copper	1.33⅓	4.00
2 hammers, machinist's	.50	1.00
4 hammers, sledge	.85	3.40
2 hammerheads	.50	1.00
12 handles, hammer	.066⅔	.80
6 hatches	.598½	3.59
3 jacks, screw	10.00	30.00
1 jack, hydraulic (2-ton lifting)		25.00
1 lathe, small		150.00
3 mallets, calking	.686⅔	2.06
5 mallets, carpenter's	.11	.55
2 mallets, serving	.78	1.56
2 mallets, wooden	.15	.30
1 maul, bronze		2.00
1 maul, carpenter's		1.00
8 mauls, iron	1.00	8.00
17 planes, assorted	.897	15.25
2 pliers, round-nose	.20	.40
1 punch, boss		20.00
1 punch, drift		.10
4 rasps	.32	1.28
2 ratchets	4.00	8.00
1 rule, brass		.25
1 saw, bow		.25
2 saws, crosscut	2.00	4.00

1 saw, hack frame and block		1.00	
4 saws, hand (worn)	.50	2.00	
6 saws, rip, logging	5.00	30.00	
140 scrapers	.38	53.20	
10 screwdrivers	.248	2.48	
2 prs. shears for metal (small)	.50	1.00	
2 prs. shears	1.43	2.86	
17 shovels, assorted	.9482	16.12	
42 shovels, fire	1.2119	50.90	
18 sledges, assorted	3.361	60.50	
29 spanners and wrenches	.5173	15.00	
1 square		.68	
1 square, steel		.41	
2 squares, try	.20	.40	
5 prs. tongs	.43	2.15	
4 prs. tongs, blacksmith's	1.20	4.80	
1 set tools, carpenter's		35.00	
1 triangle		.13	
9 vises	4.822	43.40	
2 wrenches, monkey	.875	1.75	
11 wrenches, open ended	2.00	22.00	
1 wrench, screw		.70	
			$1,082.32

Class 32. Miscellaneous stores.

32 lbs. beeswax	.5796	18.55	
14 pkgs. candles	.2144	3.00	
1 box candles		3.00	
10 lbs. candles	.09	.90	
7 rigging screws	1.357½	9.50	
120 lbs. waste, cotton	.075	9.00	
569 lbs. waste, assorted	.082249	46.80	
			90.75
Total amount			326,141.89

U. S. NAVAL BOARD OF APPRAISAL AND SURVEY,
ASIATIC STATION,
U. S. S. RALEIGH, SECOND RATE,
Cavite, P. I., August 24, 1898.

J. B. COGHLAN,
Captain, U. S. Navy, Senior Member.
F. P. WOOD,
Commander, U. S. Navy, Member.
C. G. CALKINS,
Lieutenant, U. S. Navy, Member.
S. L. HEAP,
Assistant Paymaster, U. S. Navy, Recorder.

[1st endorsement.]

U. S. FLAGSHIP OLYMPIA,
Manila, P. I., August 24, 1898.

Approved and respectfully forwarded to the Secretary of the Navy.

GEORGE DEWEY,
Rear-Admiral, U. S. Navy, Commanding Asiatic Station.

[2nd endorsement.]

Department of the Navy, Bureau of Navigation. Received and forwarded Oct. 6, 1898, to the Department.

A. S. CROWINSHIELD,
Chief of Bureau.

J. E. S.

[3rd endorsement.]

9165–C. A. D.

NAVY DEPARTMENT, *October 7th, 1898.*

Subject: Asiatic Station. Commander in chief forwards report of board of survey and appraisal, convened on board U. S. S. *Raleigh*, for the purpose of surveying, appraising, and taking careful inventory of enemy's property captured and appropriated for the uses of the United States Government by the U. S. squadron in Manila Bay since April 30, 1898, in accordance with section 4624 et seq., Revised Statutes.

Referred to the Judge-Advocate-General for such action as may be necessary under the law.

JOHN D. LONG, *Secretary.*

Call on Navy Department.

In the supreme court of the District of Columbia.

Upon due consideration of the motion of the libellant, a call is this 16th day of May, 1900, made upon the Secretary of the Navy for the following papers material to the within cause:

1. A copy of any inventory, list, or appraisement of property captured from the King of Spain in or about the arsenal at Cavite, on the island of Luzon, about the month of May, 1898, other than the report of the board of which Captain Joseph B. Coghlan was presiding officer, appointed June 4th, 1898, to survey, appraise, and inventory property captured and appropriated to the use of the United States Government by the squadron under command of Commodore Dewey, in Manila Bay, which report has been heretofore furnished this court.

2. Any return of any pay officer or other officer of the United States Navy showing any such property received, receipted for, taken up, or accounted for by him.

3. Any valuation or appraisal made by any officer of the United States Navy or any other person under orders of the Navy Department or otherwise of the vessels *Isla de Cuba*, *Isla de Luzon*, and *Don Juan de Austria*, now in the United States Navy.

A. B. HAGNER,
Justice, holding District Court.

Call on Navy Department.

In the supreme court of the District of Columbia.

Upon motion of the libellant, with the consent of the special counsel for the United States, a call is, this 5th day of June, 1900, made upon the Secretary of the Navy for duly certified copies of all orders and returns

on file in his Department relating to the proceedings of the board of appraisement of which Captain Joseph B. Coghlan was senior member, and a copy of whose appraisement has been already filed in this court, showing how the lists of property contained in this appraisement were made up, including the following, as well as any other material papers:

1. Any fleet order calling for a return of property captured at Cavite and used on board the various vessels.

2. Any letters, calls, or orders from the said board to the commanding officers or other officers of the vessels in the fleet relative to a return of such property.

3. All orders from the commanding officers of the various vessels to the heads of the various departments on board their respective vessels in regard to the same subject.

4. All returns from the heads of the various departments to the commanding officers of the several vessels in response to such orders.

5. All reports by the commanding officers of vessels or other officers to the said Coghlan board.

A. B. HAGNER, *Justice.*

Reply of Navy Department.

NAVY DEPARTMENT,
Washington, November 7, 1900.

SIR: In response to calls of the court, dated May 16 and June 5, respectively, I enclose herewith, duly authenticated under the seal of the Department, copies of appraisals of the U. S. S. *Isla de Cuba*, *Isla de Luzon*, and *Don Juan de Austria*, and of report of the commander in chief, U. S. naval force on Asiatic Station, in regard to appraisement of certained named vessels.

In forwarding this information the Chief of the Bureau of Supplies and Accounts, in an endorsement dated the 5th instant, says:

"The records of the Bureau do not include any return of property captured at the Cavite, P. I., Arsenal which has been taken up or accounted for by any pay or other officer.

"In reference to the *Don Juan de Austria*, *Isla de Cuba* and *Isla de Luzon*, as these vesssels were appraised after being raised and repaired, copies of appraisals, which include cost of raising and repairing, are submitted herewith.

"Under date of August 17, 1899, the Department directed an appraisement of certain vessels. Enclosed is a copy of the report of the commander in chief of the Asiatic Station, made in conformity with this order, giving a list of appraisals, which embraces the following vessels, marked in the report as captured from Spain:

Mindanao	(Worthless.)	Taalano	$12,000
Callao	$18,000	Sur	5,000
Iona	2,000	Barcelo	5,000
Leyte	13,500	Rapido	5,000
Manila	75,000	Este	5,000
Petrelita	1,500	El Cano	29,750

"Some of the above-named vessels were included in the report of the Coghlan board, but are again mentioned because of their reappraisement.

"The list then submitted also embraced two other vessels, the *Quiros* and *Villalobos*, appraised at $30,000 each, without note as to whether they were captured or purchased."

Copies of the calls of the court above-mentioned have been transmitted to the commander in chief of the Asiatic Station, and also to the commandant of the naval station, Cavite, P. I., for report, but in pursuance to a suggestion made by Messrs. Charles and William B. King, attorneys for the claimants, the Department has deemed it proper to forward the partial response to the calls of the court herewith transmitted, without awaiting the replies from the commander in chief and the commandant at Cavite. Their reports, when received, will be promptly forwarded.

Very respectfully,

A. S. CROWINSHIELD,
Acting Secretary.

The CLERK OF THE SUPREME COURT
OF THE DISTRICT OF COLUMBIA.

[Certificate of Acting Secretary of the Navy omitted in printing.]

No. 297–S.

UNITED STATES NAVAL FORCE OF ASIATIC STATION,
FLAGSHIP BROOKLYN,
At Sea, off West Coast Luzon, Mar. 28, 1900.

SIR: 1. Replying to the Department's letter No. 179933, of August 17, 1899, in reference to appraisals of vessels, I am forwarding herewith reports as directed on the following-named vessels:

Celtic.	Pampanga.	Nanshan.
Iris.	Paragua.	Albay.
Zafiro.	Panay.	Bulusan.
Este, Sur, Barcelo, and Calamianes.	Rapido.	Callao.
Elcano.	Petrelita.	Gardoqui.
Iona.	Samar.	Leyte.
Manileno.	Urdaneta.	Mariveles.
Mindoro.	Vasco (Basco).	Mindanao
Manila.	General Alava.	Ondina (Admiral's barge).
Villalobos.	Quiros.	Arayat.
Taaleno.	Culgoa.	
	Glacier.	

2. All those mentioned in the Department's letter, with the exception of the *Nero*, not at present attached to this station, have been appraised and the following additions were made: *Quiros*, *Villalobos*, *General Alava*, *Culgoa*, *Arayat*, and *Taalena*.

Very respectfully,

J. C. WATSON
Rear-Admiral, U. S. Navy,
Commander in Chief,
U. S. Naval Force on Asiatic Station.

The SECRETARY OF THE NAVY,
Navy Department, Washington, D. C.

(32 enclosures.)

[1st endorsement.]

DEPARTMENT OF THE NAVY,
BUREAU OF NAVIGATION,
May 2, 1900.

Subject: Commander in chief, U. S. naval force, Asiatic Station: Reports of appraisals of certain vessels of the squadron under his command.

Respectfully forwarded to the Bureau of Supplies and Accounts.

A. S. CROWNINSHIELD,
Chief of Bureau.

Appraisement of vessels of U. S. Navy.

Valuation of U. S. S. *Isla de Cuba*, November 1, 1899, under Title A (art. 1501, par. 1, Navy Regulations). Made at Hongkong. Year in which vessel was built, 1887; first commission in U. S. Navy, 1900; displacement, 1,030; gross tonnage, ———; indicated horsepower,[1] 2,200, original—on trial; purchase price (or appraisement made in 1889),[2] captured Spanish vessel; cost of repairs (since 1889, or date of purchase), including cost of raising, [$]112,000 gold.

Present valuation.

	Items. *Gold.*	Totals. *Gold.*
1. Hull (including fixed armor)	[$]114,000	
2. Auxiliary fittings of hull	12,700	
3. Appliances for working ship	4,000	
4. Hull appliances for working ammunition, ordnance, torpedoes, and turrets		
5. Total, hull and fittings (C. and R.)		[$]130,700
6. Engines	57,000	
7. Boilers	18,000	
8. Auxiliary steam machinery and appliances	6,000	
9. Total for propelling machinery (S. E.)		81,000
10. Electric power generating sets and lighting appliances	6,000	
11. Standing rigging	3,000	
12. Means of interior communication	500	
13. Total equipment (E.)		9,500
14. Fixed appliances for ordnance (O.)		
15. Grand total, value under Title A		221,200

NAVY DEPARTMENT,
BUREAU SUPPLIES AND ACCOUNTS,
November 5, 1900.

I certify that the above is a true copy.

A. S. KENNY,
Paymaster-General U. S. N.

[1] The acceptance trial has not yet taken place.
[2] The board has indirect information that the contract price for building was £50,000 sterling.

Valuation of U. S. S. *Isla de Luzon*, Nov. 1, 1899, under Title A (art. 1501, par. 1, Navy Regulations). Made at Hongkong. Year in which vessel was built, 1887; first commission in U. S. Navy, 1900; displacement, 1,030; gross tonnage, ———; indicated horse-power,[1] 2,200, original—on trial; purchase price (or appraisement made in 1889),[2] captured Spanish vessel; cost of repairs (since 1889, or date of purchase), including cost of raising, [$]102,200 gold.

Present valuation.

	Items.	Totals.
1. Hull (including fixed armor)	[$]114,000	
2. Auxiliary fittings of hull	12,700	
3. Appliances for working ship	4,000	
4. Hull appliances for working ammunition, ordnance, torpedoes, and turrets		
5. Total, hull and fittings (C. and R.)		[$]130,700
6. Engines	57,000	
7. Boilers	18,000	
8. Auxiliary steam machinery and appliances	4,500	
9. Total for propelling machinery (S. E.)		79,500
10. Electric power generating sets and lighting appliances	6,000	
11. Standing rigging	3,000	
12. Means of interior communication	500	
13. Total equipment (E.)		9,500
14. Fixed appliances for ordnance (O.)		
15. Grand total, value under Title A		219,700

NAVY DEPARTMENT,
BUREAU SUPPLIES AND ACCOUNTS,
November 5th, 1900.

I certify that the above is a true copy.

A. S. KENNY,
Paymaster-General U. S. N.

Valuation of U. S. S. *Don Juan de Austria*, Nov. 1, 1899, under Title A (art. 1501, par. 1, Navy Regulations). Made at Hong Kong.

Year in which vessel was built, 1887; first commission in U. S. Navy, 1900; displacement, 1,130; gross tonnage, ——; indicated horsepower,[1] 1,600 original; on trial; purchase price (or appraisement made in 1889), captured Spanish vessel; cost of repairs (since 1889, or date of purchase), including cost of raising, [$]94,000 gold.

[1] The acceptance trial has not yet taken place.
[2] The board has indirect information that the contract price was £50,000 sterling.

Present valuation.

	Items. *Gold.*	Totals. *Gold.*
1. Hull (including fixed armor)	[$]101,000	
2. Auxiliary fittings of hull	12,000	
3. Appliances for working ship	3,500	
4. Hull appliances for working ammunition, ordnance, torpedoes, and turrets		
5. Total. Hull and fittings (C. and R.)		[$]116,500
6. Engines	38,000	
7. Boilers	16,000	
8. Auxiliary steam machinery and appliances	7,000	
9. Total for propelling machinery (S. E.)		61,000
10. Electric power generating sets and lighting appliances	6,000	
11. Standing rigging	3,000	
12. Means of interior communication	500	
13. Total equipment (E.)		9,500
14. Fixed appliances for ordnance (O.)		
15. Grand total, value under Title A		187,000

NAVY DEPARTMENT,
BUREAU OF SUPPLIES AND ACCOUNTS,
May 5, 1900.

I certify that the above is a true copy.

A. S. KENNY,
Paymaster-General, U. S. N.

Reply of Navy Department.

NAVY DEPARTMENT,
Washington, November 17, 1900.

SIR: Referring to the call of the court dated May 16, 1900, and to the partial response thereto made by this Department under date of November 7, I inclose herewith, duly authenticated under the seal of the Department, copies of letters dated July 17 and July 25, 1899, from Naval Constructor R. P. Hobson to the Chief of the Bureau of Construction and Repair, giving, among other things, an appraisal of the U. S. S. *Isla de Cuba*, *Isla de Luzon*, and *Don Juan de Austria*.

As stated in the Department's communication of the 7th instant, further information on this subject will, upon its receipt, be promptly transmitted to the court.

Very respectfully, JOHN D. LONG, *Secretary.*

The CLERK OF THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
(1 enclosure.)

[Certificate of Secretary of Navy omitted in printing.]

C. & R. No. 801—A. 324. E. F. H.

HONGKONG AND WHAMPOA DOCK CO.,
Hong Kong, July 17, 1899.

SIR: Referring to the Bureau's letter of May 27th enclosing copy of its letter of May 20th to Naval Constructor Capps, I have the honor to

inform the Bureau that neither the original letter nor the blank tables referred to have been received.

2. In compliance with the Bureau's directions I enclose a special report in duplicate on the raising and repairing of the Spanish vessels sunk in the battle of Manila Bay.

3. The three vessels under reconstruction, the *Isla de Cuba*, *Isla de Luzon*, and *Don Juan de Austria*, are at about equal stages of completion, which I estimate to be about 80 per cent, compared with the vessels fitted out ready for sea. The batteries and the electric plant, both of which are supplied by the Government, have not yet arrived and will doubtless be the last items. I estimate that the time of completion will be about six weeks after the arrival of armament and electric plant.

4. I estimate the value of these vessels when completed, exclusive of armament, to be about as follows:

Isla de Cuba:	
Hull, fittings and outfit	$140,000.00
Machinery	75,000.00
Total	215,000.00
Isla de Luzon:	
Hull, fittings and outfit	140,000.00
Machinery	75,000.00
Total	215,000.00
Don Juan de Austria:	
Hull, fittings and outfit	125,000.00
Machinery	55,000.00
Total	180,000.00
Total estimated value of all three vessels	610,000.00

The total cost of raising, fitting out, and repairing will be about as follows: For *Isla de Cuba*, $100,000; for *Isla de Luzon*, $110,000, and for *Don Juan de Austria*, $94,000. Total cost for all three vessels, about $304,000. The advantage and gain to the Government arising from the undertaking is thus as follows: In case of *Isla de Cuba*, $115,000; in case of *Isla de Luzon*, $105,000, and in case of *Don Juan de Austria*, $86,000, making a total gain of about $306,000.

5. I feel that the special attention of the Bureau should be called to the admirable contract with the Dock Co. drawn up by Naval Constructor Capps, a copy of which has been previously forwarded to the Department. It is due to the care, ability, and foresight of Mr. Capps that such large advantage has accrued to the Government.

6. Among the features of the special report to which the Bureau's attention is particularly called is the general good condition that the heavy scantlings were found to be in when raised. This points to the partial cessation of corrosion after reaching a certain depth from the surface of the metal, the layer of oxide as it forms doubtless serving as a preservative. This is particularly the case with parts that remained completely submerged. Thus the large engine parts were scarcely injured at all. This feature has an important bearing upon the wrecks still in Manila Bay, which I expect to examine with divers, when the vessels

now in hand are completed. The longer sojourn immersed may not have seriously injured the principal parts and there may be similar advantage to the Government in entering into further operations of salvage, particularly in the case of the *Don Antonio de Ulloa* and *Velasco*, sister ships to the *Don Juan de Austria*, which, from all accounts, suffered less even than those that have been raised.

7. In accordance with paragraph 4 of the letter of May 20th, I respectfully call the attention of the Bureau to the matter of general expense for docking and repairing United States vessels on the Asiatic Station. Practically all docking and most of the repairs of importance during the last eighteen months have been done at Hongkong by the Hongkong and Whampoa Dock Co. The profits of this company, as shown by the market value of its shares and its dividends, are enormous, not that the prices are so exorbitant when compared with the prices in Europe and America, taking account of higher cost of material, though with such comparison the prices are still very high, as will be seen from the enclosed schedule, but that labor even of skilled kinds is exceedingly low. There would be large advantage to the Government in the establishment in the Philippines of a yard thoroughly equipped with docks and plant capable of doing all the work of docking and repairs for the Navy. The British Government is undertaking such establishment here, though at great cost, involving the making or reclaiming of a large part of the land required.

8. Attention should be called, however, to the fact that the success and advantage of such an establishment, as indeed the success of any industrial establishment in this part of the Orient, would necessitate the employment of Chinese labor. This labor is not only unlimited in supply, but it is equal to practically all the requirements of modern industry. Chinese do all the work inside and out, for all the departments of the shipyard, white supervision being required chiefly to indicate simply what is wanted. The Chinese have a remarkable natural adaptability, requiring but short apprenticeships and experience. Their industrial capacity is simply marvelous. To the extent of my observation and enquiries, there is no place in modern industry which they can not fill.

9. Private shipyards having a direct bearing on navy-yards, occasion may be taken to point out that for the docking and repairing of merchant vessels the same conditions exist as for war vessels. The Dock Co. here has practically a monopoly in this part of the Orient, and there is a large field for a private yard at Manila, particularly in view of the steady increase in the amount of shipping and the probable change from Hongkong to Manila as the terminus of ship lines.

10. This matter will be the subject of further investigation and report when further opportunities of observation arise.

Very respectfully,

R. P. Hobson,
Naval Constructor, U. S. N.,
Superintending Constructor.

To Rear-Admiral Philip Hichborn, U. S. N.,
Chief of Bureau of Construction and Repair,
Navy Department, Washington, D. C.

C. & R. No. 801–A. 325.

HONGKONG & WHAMPOA DOCK CO., LIMITED,
Hongkong, July 25, 1899.

SIR: In compliance with the directions of the Bureau's letters of May 20th and May 27th, I have the honor to make the following special report on the operations of raising and reconstructing Spanish vessels sunk in the battle of Manila Bay May 1st, 1898.

I.—GENERAL FEATURES.

2. Photographs of the wrecks will be delivered to the Bureau by Naval Constructor Capps.

3. The approximate positions of the wrecks after the battle are indicated in the accompanying sketch.

Their general conditions were as follows, the parts above water in practically all cases having been more or less looted, in addition to the other damages mentioned:

Reina Christina.

Flagship, steel cruiser, 3,500 tons; forward end of main deck about 4 feet out of water and after end about awash at low tide; upper works considerably damaged by shot and badly burned.

Isla de Cuba.

Steel gunboat, 1,030 tons; forward end of main deck about 3 feet out of water and after end about 2 feet below water at low tide; upper works more or less damaged by fire.

Isla de Luzon.

Steel gunboat, 1,030 tons; forward end of main deck about 1 foot below water and after end about 4 feet above water at low tide; upper works more or less damaged by fire.

Don Juan de Austria.

Iron gunboat, 1,130 tons; forward end of main deck about 3 feet above water and the after end about 3 feet below water at low tide; upper works badly damaged by fire.

Don Juan de Ulloa.

Gunboat, sister ship to *Don Juan de Austria;* main deck about 2 feet below water at low tide; upper works more or less damaged by shot; vessel otherwise uninjured, not having been burned.

Valasco.

Gunboat, practically sister ship to the *Don Juan de Austria;* forward end of main deck about awash, and after end about 2 ft. below water at low tide; vessel practically uninjured; sunk at her buoy by opening

sea valves. This vessel and the *Don Antonio de Ulloa* seem to have been undergoing repairs at the time of the battle, the boilers of the *Velasco* being in the shops and her guns ashore.

Castilla.

Wooden cruiser, 3,340 tons; main deck about awash at low tide; vessel practically destroyed by fire.

General Lezo.

Iron gunboat, 525 tons; main deck about awash at low tide; upper works badly burned; magazine explosion.

Marques del Duero.

Iron gunboat, 500 tons; forward end of main deck about 3 feet above water and after end about 1 foot below water at low tide; upper works badly burned.

Argos.

Surveying vessel; main deck 2 feet below water at low tide; upper works badly burned.

Mindanao (transport).

Main deck well out of water at low tide; upper works badly burned; explosion aft, sides ripped open.

4. The details of injuries for the vessels raised are described below:

II.—THE OPERATIONS OF RAISING.

NOTE.—The information concerning the operations of raising is gathered principally from the log kept by the engineer of the dock company.

5. After examination of the wrecks by Naval Constructor Capps, the commander in chief advertised for bids for raising, repairing, and fitting out the *Isla de Cuba*, *Isla de Luzon*, and *Don Juan de Austria*, and for the purchase of the other wrecks. In response to this advertisement the Hongkong and Whampoa Dock Co. made a bid for raising, repairing, and fitting out the three vessels named. This bid was revised in conference with Naval Constructor Capps, and was embodied in a formal contract entered into between the commander in chief and the Dock Co., under date of October 24th, a copy of which contract was fowarded to the Department.

6. No bid was received for any vessel other than the three named, *Isla de Cuba*, *Isla de Luzon*, and *Don Juan de Austria*.

7. *Raising the Isla de Cuba.*—Vessel down by the stern with main deck about 5 feet out of water, forward end about 2 feet under water of aft. Soundings only 8 to 10 ft. at low tide. Expedition arrived at Cavite October 29th, and the same day began work on the *Isla de Cuba*. Divers were sent down to stop openings in hull. Bulwarks were built up with 12″ planking so that the top would be above water at high tide. Three centrifugal pumps were mounted on board—a 6″ forward over

hatch under forecastle; a 10″ amidships over engine-room hatch, and a 12″ after over wardroom hatch. Pumps were started Nov. 3rd, steam being supplied by the tug *Este*, by permission of the commander in chief. Though pumping well down on the 4th, the vessel did not budge, apparently held by the suction of the mud. Soundings of eight to twelve feet with the water just above the main deck showed the vessel to be deeply imbedded in the mud. With the assistance of divers bamboo poles and planks were driven down along the ship's sides and worked to admit water beneath the vessel. Finally at 2.30 p. m. on the 5th the vessel lifted.

Upon effort being made to haul the vessel out astern, she struck on the bank of her mud bed after moving about 40 feet. The next day she was hauled out about 40 feet further cutting her way, as it were, with the rise and fall of tide. Finally, on the 7th November, she was gotten completely off. On the 15th she was towed to the slip.

8. *Raising the Isla de Luzon.*—Vessel down by the head, with main deck about 1 foot below water forward and aft 4 feet above water aft. Soundings 12 to 15 feet. Carpenters were sent ahead from the *Isla de Cuba* on November 1st, to start on the *Isla de Luzon*, and the 6″ and 10″ centrifugal pumps were shifted from the former to the latter on the 6th. When the *Isla de Cuba* was finally raised and clear the wrecking force was concentrated on the *Isla de Luzon*. The work was interrupted, however, from the 9th till the 14th by a typhoon, during which, on the 12th, it was deemed advisable to flood the *Isla de Cuba* aft to sink her sufficiently to bear well on the bottom. The openings being closed, pumping out the *Isla de Luzon* began on the 15th, and the vessel floated at 3.30 p. m. of the same day, a duplex donkey pump having been installed over the wardroom hatch in addition to the two pumps 6″ and 10″ centrifugal, referred to above. The stern, however, was held by the old wreck with which it was entangled, and not until the 19th was the vessel finally gotten clear and the next day she was towed to the slip.

9. *Raising the Don Juan de Austria.*—Vessel down by the stern with main deck about 3 feet above water forward and about 3 feet below water aft. Soundings 14 to 15 feet.

On the 1st of November several workmen were sent ahead to close the gangways and other openings. On the 22nd the pumps were shifted from the *Isla de Cuba* and *Isla de Luzon*, the 6″ being put forward, the 12″ amidship and the 10″ aft. Started pumping early the 23rd and the vessel was afloat at 11.30 a. m. of the same day. She continued to make water but the pumps kept it under control and the next day she was towed to the slip.

III.—REPAIRING AND FITTING OUT.

10. After being raised all three vessels were hauled up on the slip at Cavite, their bottoms cleaned and measures taken to close all openings in the hull. The engines and boilers were then cleaned up and overhauled sufficiently to put to sea under their own steam, and arrangements were made for steering. After preliminary trials the vessels proceeded to Hongkong in the hands of the contractors under their own steam. The *Isla de Cuba* and *Isla de Luzon* came in company, starting on December

19th. They encountered rather heavy monsoon seas and made heavy weather of it, arriving in Hongkong December 24th in a semisinking condition, flooded aft beyond control of the pumps.

The *Don Juan de Austria* left Jan. 16th and arrived Jan. 20th, after a passage without incident.

11. The principal damage on all three vessels was done by fire, which, in consuming the wood work, caused heavy warping and buckling on the adjacent metal work. On all three vessels the fire was limited principally to the part, from bridge house to stern, extending from poop to berth deck. On the *Don Juan de Austria* some damage was done by shot, though not of sufficient consequence to be specified; on the *Isla de Cuba* and the *Isla de Luzon* the damage from this cause was unimportant. The damage from corrosion, though general and requiring overhauling of everything, was not excessive, causing but slight deterioration in large pieces and heavier scantlings, being more serious in light fittings and small scantlings, which required general renewing fore and aft. This deterioration was naturally most marked in the region of the water level, in parts alternately in air and in water with the fall and rise of tide. It was no small task to clean the vessels, the accumulation amounting to many tons, everything being choked and clogged; every square inch of surface throughout hull and fittings having to be scraped.

12. The following specified conditions pertain to the *Isla de Luzon*, but may be taken generally as applicable also to the *Isla de Cuba*.

Hull work.—Skin plating and framing was scorched, warped, and buckled from near the water line upwards, along stern and along both sides to about abreast the boiler hatch. Most of the plating and some of the framing in the region of the poop had to be removed and straightened, and some of it renewed, from the berth deck upward, and part of the plating of the hammock berthing had to be removed and straightened as far as the break of the forecastle.

For decking, the wood flat was burned away on poop and on main deck from the stern to the break of the forecastle. The heat caused severe warping of the plates, hatch combings, deck stringers, and deck beams, causing the beams to collapse in many cases, particularly on the poop. It was noticeable that the metal flat beneath the wood flat caused complete protection for the beams beneath it in the part where it extended over the upper coal bunkers, a feature emphasized and reported upon in the case of the Spanish vessels off Santiago de Cuba. This metal flat, however, had to be renewed, its slight scantling and location between wind and water causing destruction by corrosion.

The forecastle deck, though unburned, was in such condition as to require renewing throughout, as in the case of poop deck and main deck, all renewed in teak wood.

The warped beams were taken out, straightened, and put back.

For bulkheading, the structural bulkheads were more or less intact, requiring partial renewal in the case of a few individual plates. The upper coal-bunker bulkheads were warped, and in some cases badly corroded, requiring to be taken off, straightened, and to be partially renewed. All stateroom bulkheading was completely consumed and storeroom bulkheading and battening below the berth deck, as in general with woodwork, had to be renewed. It may be noted here that corrugated iron

has been substituted for wood in replacing the stateroom bulkheading. The water-tight doors of bulkheads were in fair condition, being put back after cleaning.

Fittings.—Brass fittings in general of decks, bridge, conning towers, &c., were looted. The light plate work as a rule was practically destroyed by corrosion, while the forge work, even in case of very small objects, was in more or less good condition, admitting of being put back after cleaning.

The drainage system was in fair condition, only requiring overhauling. The fire main was in similar condition. It was modified to extend farther forward and aft, stop valves were added, and additional risers fitted.

The ventilation system was in fair condition, requiring practically only overhauling. It formerly extended only to the engine and fire rooms, a small hand machine being used forward and aft. An electrical system has been introduced in two independent parts, one forward and one aft, with a two-horse power electric motor for each part; both work on the plenum system, serving the storerooms as well as the living spaces.

Miscellaneous fittings required alteration as follows:

Steering arrangements complete overhauling and renewal of all deck and bridge parts and parts for transmission. The main tiller on the *Luzon*, which was broken, required renewal.

Electric plant complete renewal.

Steam windlass and capstan and anchor gear required overhauling and repairing. Galley fittings complete renewal. Chart house required renewal.

Internal communications required complete renewal.

Entire new sanitary system.

Air ports partial renewing.

Entirely new outfit of boats.

New set of sails and awnings, also a new mainmast for the *Cuba*.

Accommodation ladders and all wooden ladders required renewal.

New furniture required throughout.

Machinery.—The main engines were in good condition, though all parts required removal to shop and overhauling, and some small parts required renewal. Propeller blades required partial renewal.

The main boilers were in only fair condition, due principally to use and neglect in service. They required more or less extensive repairs, and involve a reduction of original working pressure.

The auxiliary machinery was in fair condition, though requiring complete overhauling and renewal of small parts.

Piping, as a rule, was in fair condition, though requiring complete overhauling and testing and more or less renewal.

The donkey boilers were in bad condition, and would have required replacing by new ones, but, under the circumstances, it was preferable to leave them off altogether.

The distilling apparatus required renewal and the fresh-water tanks overhauling and repairing.

13. The condition of the *Don Juan de Austria* was similar to that of the *Isla de Cuba* and *Isla de Luzon*, with the following principal differences:

The effect of fire was more pronounced, main-deck and poop-deck beams having sunk in more extensively.

There was no fire-main system and but meagre and insufficient drainage arrangements, requiring installation of new fire main and new drainage system.

The boilers required more extensive repairs. The effect of corrosion in general was less pronounced than in the other two vessels, due in part, no doubt, to the fact that this vessel is of iron and has much heavier scantlings.

14. The condition of the armament and the lack of correspondence of caliber with the service ammunition required replacing by U. S. standards. The torpedo outfit was in poor condition. It was advisable for all reasons to remove this outfit and not replace it.

15. The instructions of the commander in chief, as also the condition of the contract, required, in general the restoring of the vessels to their conditions before the battle, though the contract contained a general clause providing that the vessels be fitted out as vessels of war in the United States Navy. A number of structural alterations were required, however, to make the vessels efficient. The following are the principal ones, the contractors receiving compensation for same as provided for in the contract. All of the changes have been approved by the commander in chief.

Principal changes on the Isla de Cuba and Isla de Luzon for purposes of stability.—These vessels were overdesigned, and even after six-pounders were substituted for 12 c/m guns on the main deck and the foremast changed from square rig to fore and aft rig, the vessels were top-heavy and required ballast to give them sufficient stability. From each vessel there was removed after their arrival here from forty to fifty tons of ballast in the form of pig iron and of scrap iron in cement. This is an enormous dead weight for vessels of this size. Therefore, with a view to ameliorating this condition, a new coal bunker was installed below the protective deck, forward of the fire rooms, the forward magazine permitting this arrangement. The forward upper coal bunker on each side has been reduced to half the capacity, the forward half being converted into storerooms. The conning towers have been removed.

Even with these changes and the additional assistance of the removal of the donkey boilers, which were carried on the main deck, and the change from 12 c/m to 4 in. guns on the poop and forecastle, it is probable that some of the ballast may have to be put back, particularly as indications point to the vessels being more or less down by the heads.

The frames and floors beneath boilers were found to be in wretched condition, due to neglect in previous service. These had to be renewed by taking off the bottom plating.

For the new ventilation system the Government furnished the electric fan motors and the contractors were allowed compensation for installation.

It is proposed to fit double awnings over poop, forecastle, and bridges, for which the contractors would be allowed partial compensation. This proposition has not yet been approved by the commander in chief.

Principal changes in the Don Juan de Austria.—The subdivision forward was inadequate, leaving the vessel liable to go down from the bilging of a single compartment. In fact there was no bulkhead between

the fire-room bulkhead and the collision bulkhead, this latter being in the extreme bow. In consequence a water-tight metal bulkhead was worked on frame No. 15, extending up to the main deck. The vessel had no steam steering gear in former service. Such gear has been purchased by the Government and installed by the contractors.

The same arrangement was made for the new ventilation system as for *Isla de Cuba* and *Isla de Luzon*, and double awnings are similarly proposed for poop, forecastle, and bridges.

More than ordinary boiler repairs were required—that is, repairs due to previous service—for which compensation was allowed the contractors.

In addition to the above principal changes, the contractors were allowed partial compensation, in accordance with the contract, for various items, such as closing up torpedo parts, fitting new deck plating, fitting rubbing strakes and shoe, straight davits for steam launches, changes in dynamo room, installation of electric plant, partial allowance for navigating instruments, &c.

16. General plans of the arrangements finally adopted are being gotten out, and prints will be forwarded to the Bureau when completed. These arrangements differ from those already sent to the Department principally in the arrangement of storerooms and the changes described above as alterations. In the case of the *Isla de Cuba* and *Isla de Luzon*, the 6-pdrs. indicated on the rail in the waist will be mounted on the poop on the quarters, as only pedestal mounts were shipped. Besides, this arrangement will give a more efficient field of fire and assist somewhat in the matter of trim.

In this connection, attention may be called to the arrangements for health and comfort of the officers and crew, which have been the subject of special care and attention; to the sanitary system; to the arrangements of w. c.'s; to the baths for officers, and the wash rooms for crew and firemen, where cold salt shower will be always ready and arrangements for fresh water under control, which can be heated for the firemen.

Care has been taken to keep the galley and all auxiliary machinery and steam piping out of the living spaces. Reference has already been made to the special arrangements for ventilation, also to the double awnings.

17. *Progress and time estimated.*—Several weeks elapsed after the arrival of the vessels before the actual work of repairs was taken in hand, the time being devoted to cleaning out.

Since actually under way, more or less delay has been caused by the difficulty of obtaining material, some of which—such, for instance, as the corrugated metal for stateroom bulkheading—having to come from the United States and Europe. Generally speaking, however, the contractors are not far behind their contract time, while the items of longest delay will doubtless be those due to the Government in delivering the guns and electrical plant.

I estimate the stage of completion at 80 per cent on June 30th, being practically the same for all three vessels.

By the conditions of the contract, one of the two, *Isla de Cuba* or *Isla de Luzon*, is due for completion by June 24th; the other, July 24th, and the *Austria* will be due the 20th September.

I estimate that they can all three be completed within six weeks after the arrival of batteries and electric plant.

18. The matter of cost.

	Isla de Cuba.	Isla de Luzon.	Don Juan de Austria.
	$ Mex.	$ Mex.	$ Mex.
Contract price	157,500.00	177,500.00	142,000.00
Extras (not including double awnings)	21,461.55	19,787.18	31,799.10
Total expenditure with contractors	178,961.55	197,287.18	173,799.10
Estimated cost of articles purchased direct by the Government	25,000.00	25,000.00	26,200.00
Total cost about	203,950.00	222,300.00	200,000.00

Grand total, $626,250 Mexican = about $300,600 gold.

In addition to the above costs, a marine insurance has been taken out against typhoons amounting to $967,000 Mexican, at a cost of $4,835 Mexican = about $2,300 gold, a fire insurance for the same amount at the same cost having been taken out by the contractors in accordance with the contract.

The above costs do not include the allowances for putting the vessels into commission, for only those of a consumable nature, corresponding generally to the articles classed as "supplies, Title Y" in the allowance lists, are furnished by the Government, the contractors furnishing the articles of outfit, corresponding in general to those classified as "equipage, Title B."

Allowing a margin of $1,000 gold for the estimates, the grand total cost to the Government is about $304,000 gold.

19. *Estimates of the value of the vessels.*—Excluding armaments, which are furnished by the Government, I estimate the values of the vessels completed to be as follows:

	$ Gold.
Isla de Cuba:	
Hull, fittings, and outfit	140,000
Machinery	75,000
	215,000
Don Juan de Austria:	
Hull, fittings, and outfit	125,000
Machinery	55,000
	180,000
Isla de Luzon:	
Hull, fittings, and outfit	140,000
Machinery	75,000
	215,000
Total value of all three vessels, gold	610,000

20. Comparing the cost to the Government, $304,000 gold, with the value of the vessels, $610,000 gold, the operations result in a net gain for the Government of $306,000 gold. The vessels will have been raised, reconstructed, and fitted out at an expense of about one-half their actual value.

Reference scarcely need be made to the opportune addition of these vessels to our Navy and their field for usefulness in the waters for which they were designed, or to the sentiment of association.

21. In compliance with the Bureau's directions, photographs of present condition are forwarded herewith, prints by mail, negatives by parcel post, twelve negatives and twenty-four prints, showing the present stage of completion. It was difficult to get satisfactory conditions of light for inside photographs because of the mat sheds built for rain and sun.

IV.—FURTHER SALVAGE OPERATIONS.

22. It is difficult to report at the present time upon the matter of the advisability of undertaking further operations of salvage. It will be necessary to make examination by divers, which I shall not have opportunity of seeing to until after the completion of the vessels in hand. Diving examination has not been made as yet, but from all accounts and from photographs, two of the wrecks at least offer prospects, the *Don Antonio de Ulloa* and the *Velasco*, vessels similar to the *Don Juan de Austria*. These vessels were sunk at their buoys and were not burned.

23. In view of the difficulty of determining the conditions of corrosion after the long immersion, it is scarcely probable that a contractor would be willing to bid upon the matter of reconstructing and fitting out until after examination after raising. Moreover, though the experience with the three vessels in hand would lead to the conclusion that the corrosion due to longer immersion would not be found excessive with the more important parts of hull and machinery, yet I believe it would be prudent to raise one vessel only at first and find out her actual condition before embarking upon further operations.

This matter will be the subject of further special report to the commander in chief after the completion of present duty.

Very respectfully,

R. P. Hobson,
Naval Constructor, U. S. N.,
Superintending Constructor.

Rear-Admiral Philip Hichborn, U. S. Navy,
Bureau of Construction and Repairs,
Navy Department, Washington, D. C.

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173 [Filed Oct. 18, 1901.]

In the supreme court of the District of Columbia.

GEORGE DEWEY, ADMIRAL UNITED STATES Navy, on behalf of himself and the officers and crew of the United States naval force on the Asiatic Station, taking part in the battle of Manila Bay, on May 1, 1898, and later captures at the same place,

v.

THE "DON JUAN DE AUSTRIA," "ISLA DE CUBA," "Isla de Luzon," "Leyte," "Mindanao," and other vessels and miscellaneous stores and supplies captured by the fleet under command of libellant.

No. 559. District court.

Motion for leave to amend libel.

[Filed October 18, 1901.]

Now comes the libellant herein and prays leave of this court to amend his libel as heretofore filed in the following manner:

1. Omit from paragraph one of said libel the following words: "U. S. supply steamer 'Nanshan,' U. S. supply steamer 'Zafiro.'"

2. Insert at the close of said first paragraph the following:

"That said squadron was also accompanied by two supply
174 steamers, the 'Nanshan' and the 'Zafiro,' which had been purchased by the United States shortly before said engagement and were used by the libellant for carrying coal and provisions; that said vessels were each under the immediate command of a United States naval officer and had on board four enlisted men of the United States Navy, and were not armed except by two mounted one-pounder guns intended for protection from boat attacks, but not for offensive operations; that said vessels were not able to take any part in the captures hereinafter set forth, but remained out of gunshot range during the engagement hereinafter referred to."

HERBERT & MICOU,
Proctors for Admiral Dewey and Other Officers.
GEORGE A. & WM. B. KING,
Proctors for Various Officers and Enlisted Men of the United States Navy.

I assent.

GEORGE H. GORMAN,
Special Attorney for U. S. in Charge of Case in Absence of C. C. Binney, Esq.

I agree to the amendment herein being made, reserving all right to objection to the substance thereof, and all rights acquired by intervening under said libel as originally filed, the intervention having adopted by reference the original libel.

CHAS. W. CLAGETT,
Proctor for Edwin F. Stovell.

175 In the supreme court of the District of Columbia.

GEORGE DEWEY, ADMIRAL UNITED STATES Navy, on behalf of himself and the officers and crew of the United States naval force on the Asiatic Station, taking part in the battle of Manila Bay, on May 1, 1898, and later captures at the same place,
v.
THE "DON JUAN DE AUSTRIA," "ISLA DE Cuba," "Isla de Luzon," "Leyte," "Mindanao," and other vessels, and miscellaneous stores and supplies captured by the fleet under command of libelant.
No. 559. District court.

Order permitting amendment of libel.

[Filed October 18, 1901.]

Upon hearing of the motion for leave to amend the libel in the above-entitled cause, filed on the 18th day of October, 1901, made by the libelant and consented to by the special attorney for the United States and by the proctor for Edwin F. Stovell, leave is hereby granted to this libellant this 18th day of October, 1901, to amend his libel as appeared in said motion, reserving all rights, if any, which have been acquired by the intervenor, Edwin F. Stovell.

A. C. BRADLEY, *Justice.*

176 ANSWER OF LIBELLANT.

[Filed October 31, 1901, J. R. Young, clerk.]

In the supreme court of the District of Columbia.

GEORGE DEWEY, ADMIRAL U. S. N.,
v.
THE "DON JUAN DE AUSTRIA" AND OTHER prize property.
No. 559. District court.

Answer of libellant to the intervening libel of Edwin F. Stovell.

Now comes the libellant, George Dewey, Admiral U. S. N., and having read the libel of Edwin F. Stovell, styling himself captain, respectfully prays that said intervening libel be dismissed and the prayers thereof overruled; and for reason thereof this libellant states as follows in answer to the allegations of said Edwin F. Stovell:

1. In answer to the first paragraph of said intervening libel, this libellant denies that said Edwin F. Stovell was, at the time of the capture referred to in said intervening libel, to wit, on date after May 1, 1898, a captain of the United States armed naval ship "Nanshan," but said Edwin F. Stovell was a civilian employee, hired to perform service on said vessel under the direction and control of this libellant and of such officer of the United States Navy as this libellant might designate for the

purpose of commanding said vessel; that prior to the first day of May, 1898, and for a long time continuously thereafter, said vessel was under the command of Lieutenant Ben W. Hodges, of the United States Navy. This libellant admits that the aforesaid ship "Nanshan"
177 was attached to the squadron in and around Manila Bay, Philippine Islands, on and after the first day of May, 1898, said squadron being under the command of this libellant and being a part of the United States naval force on the Asiatic Station.

2. In answer to the second paragraph of said intervening libel of Edwin F. Stovell, this libellant admits that, in the month of April, 1898, acting on behalf of the United States, he bought the ship "Nanshan," then a British vessel, for and on behalf of the Government of the United States and under the authority of the Secretary of the Navy, purchasing said vessel in his own name; that he did, in said month, place on board of said vessel two one-pound guns, eleven rifles, and eleven revolvers, and detailed for command on board said vessel the said Lieutenant Ben W. Hodges, U. S. N., and four enlisted men of said Navy, and did, when the squadron under his command proceeded to Manila Bay, order said vessel to accompany said squadron, and said vessel did accompany said squadron, being then under the command of Lieutenant Ben W. Hodges, U. S. N., and not under the command of said Edwin F. Stovell.

3. In answer to the third paragraph of the intervening libel of said Edwin F. Stovell, this libellant says that the said Edwin F. Stovell and the officers and crew who were, at the date of the purchase of said vessel, in the month of April, 1898, serving on said vessel, the "Nanshan," entered into a contract and agreement with this libellant, who was, at the time as aforesaid, an officer of the United States Navy and in charge of naval operations on the Asiatic Station, to serve on board said
178 vessel, the "Nanshan," after her purchase by this affiant; but said Edwin F. Stovell, his officers and crew, did not agree to enter, and did not enter, the naval service of the United States, and did not agree to be subject to, abide by, and obey all laws, rules, and regulations of the United States or of the United States Navy Department relating to the armed naval forces of the United States, or to obey all orders or commands given or issued by their superior officers in the United States Navy; but said Stovell, his officers and crew, entered into ordinary articles of enrollment or enlistment such as are usual in the merchant service, and agreed to serve faithfully on said vessel under command of this libellant or of such other person as he might place thereon in command of said vessel; that their service was limited to said vessel and that their duties extended no further than the usual duties undertaken by the officers and crew of a vessel in the merchant service; that by the agreement made between this libellant and the said Edwin F. Stovell, his officers and crew, they were not subject to be transferred to any other vessel or to be assigned to duty elsewhere than on the "Nanshan."

4. In answer to the fourth paragraph of the intervening libel of said Edwin F. Stovell, this libellant says that on May 1, 1898, the "Nanshan" did not form a part of the effective naval service of the United States during the battle of Manila Bay, but was used as a collier, and during the battle of Manila Bay was placed apart from the scene of active fighting in a place of safety, in company with the supply ship "Zafiro," and

under the care of the United States revenue cutter "McCulloch;" that the U. S. S. "Raleigh" was under special orders that, in case any
179 accident or mishap befell the "Nanshan" to go to her relief; that said vessel was, at the time, not an armed vessel of the United States in such conditions or under such circumstances as to be able to render effective aid if required; that she was without any protective armor, and that the guns which she carried were so few and light that she was capable of no offensive operations and was incapable of defending herself against any attack except that of a small boat of the most feeble nature; and this affiant admits that, during the whole battle of Manila Bay, of May 1, 1898, the "Nanshan" was within signal distance of the vessels of the attacking squadron under the command of this libellant.

5. In answer to the fifth paragraph of the intervening libel of said Edwin F. Stovell, this libellant denies that the said intervening libellant was captain of the ship "Nanshan," and refers to the preceding statements of this answer for the full statement of the facts in regard to his position; and this libellant denies that said Edwin F. Stovell participated in the capture set forth in the libel of this libellant in the cause in which this answer is filed, but that, when said captures were made, the said Edwin F. Stovell and the officers and crew on said U. S. S. "Nanshan" remained at a place of safety in the harbor of Manila Bay, removed from said fight and from the captures therein made, and took no part in said captures and have no share therein.

And having answered fully the intervening libel of said Edwin F. Stovell, the libellant prays that said libel be dismissed.

180 DISTRICT OF COLUMBIA, *to wit:*

Hilary A. Herbert, being duly sworn, deposes and says that he is proctor for the libellant, George Dewey, Admiral U. S. N., in the above-entitled cause; that he has read the foregoing answer to the intervening libel of Edwin F. Stovell, and that the facts therein stated are true to the best of his information and belief.

H. A. HERBERT,
Proctor for Libellant.

Sworn & subscribed to before me this 31st day of October, 1901.
[SEAL.] CHARLES R. HARBAN,
Notary Public.

181 STIPULATION.

[Filed November 5, 1901.]

In the supreme court of the District of Columbia.

GEORGE DEWEY, ADMIRAL UNITED STATES Navy, on behalf of himself and the officers and crew of the U. S. naval force on the Asiatic Station, taking part in the battle of Manila Bay, May 1, 1898,
v.
THE "DON JUAN DE AUSTRIA," "ISLA DE Cuba," "Isla de Luzon," "Leyte," "Mindanao," and other vessels and miscellaneous stores and supplies captured by the fleet under command of libellant.
} No. 559, District court.

It is hereby stipulated and agreed that to the amendment to the libel filed by leave of court on the 23rd day of April, 1901, there may be added after the words "wrecking boats" the words "and other vessels or property;"

And that there may be added to the amendment to the answer filed on the 24th day of April, 1901, the following:

The Attorney-General admits that certain vessels, the property of subjects of the King of Spain, were taken possession of by the libellant and the naval force under his command on or after the 1st day of May, 1898, but he submits that one or more of these vessels were subsequently restored to the owners thereof, and therefore are not the subject of condemnation by this court as prize property.

HERBERT & MICOU,
W. B. K.,
Proctors for Libellant.
CHARLES C. BINNEY,
Special Attorney for the United States.

182 OPINION OF COURT.

[Filed Jan. 27, 1901.]

In the supreme court of the District of Columbia.

GEORGE DEWEY, ADMIRAL UNITED STATES Navy, on behalf of himself and the officers and crew of the U. S. naval force on the Asiatic Station, taking part in the battle of Manila Bay, May 1, 1898,
v.
THE "DON JUAN DE AUSTRIA," "ISLA DE Cuba," "Isla de Luzon," "Leyte," "Mindanao," and other vessels and miscellaneous stores and supplies captured by the fleet under command of libellant.
} No. 559, District court.

This is a libel in prize. The libellant prays the condemnation in prize of certain vessels, floating property, property taken from sunken

or destroyed vessels, and naval stores captured ashore, all captured by the naval force under his command in the battle of Manila Bay, May 1, 1898.

On the part of the United States it is conceded that some of the property was captured under such circumstances as to entitle the libellant to proceed for its condemnation as prize. Such property includes the Spanish seagoing vessels, with the property found on board of them, and the equipment belonging to them captured in that battle, or soon
183 thereafter, in the course of active naval warfare. But the right to condemnation is denied of property taken from vessels sunk or destroyed in that engagement, for the sinking or destruction of which vessels the libellant and the officers and crew under him have claimed and received bounty under the statute; of three Spanish vessels of war, that at the close of the battle were run into shallow water near shore and there sunk by opening their sea valves; of property captured ashore at the naval arsenal, and of some nonseagoing craft, a species of lighter, called cascos, the property of private individuals.

Four distinct questions are thus raised. It is agreed that the court in passing upon these questions may confine itself simply to the question of prize or no prize, and that all questions of value and distribution may be reserved for disposition by the auditor of this court in the first instance.

Judged by the standard of value, the first question is whether the three vessels of war are liable to condemnation. They have not, nor has any other property for which condemnation is prayed, been brought into court. It is conceded that these vessels are now in the service of the United States, and that the other property was appropriated to its use, so that none of the property can be sent in for adjudication. The Secretary of the Navy, having failed within three months after the cap-
184 ture to designate a district for the institution of proceedings, this action was brought, under the provisions of secs. 4624 and 4625, R. S. As the propriety of this proceeding and the jurisdiction of the court in the premises are not questioned, the mere reference to those sections is sufficient.

These three vessels of war were the "Don Juan de Austria," the "Isla de Cuba," and the "Isla de Luzon," the first named being an unprotected cruiser and the other two being protected cruisers in the naval service of the King of Spain. These vessels, under the severe gun fire of the naval force of the United States, steamed to a position of greater safety and after the battle backed ashore, and in shallow water their sea valves were opened and they were sunk to the bottom. Their upper works were afterwards set on fire by the order of Admiral Dewey, and the woodwork above water was burned. "The forecastle decks," according to the testimony of Naval Constructor Cops, "of all three of the vessels were a little above water. The afterdecks of all three were entirely burned out." Naval Constructor Hobson, in his special report to the Navy Department under date of July 25, 1899, says the "Isla de Cuba" had its "forward end of main deck about three feet out of water, and after end about two feet below water, at low tide. The upper works were more or less damaged by fire." The "Isla de Luzon" had its "forward end of main deck about one foot below water and after end about

four feet above water at low tide; upper works more or less
185 damaged by fire." The "Don Juan de Austria" had its "forward end of main deck about three feet above water and after end about three feet below water at low tide; upper works badly damaged by fire." "The principal damage on all three vessels was done by fire which, consuming the woodwork, caused heavy warping and buckling on the adjacent metal work." "On the 'Don Juan de Austria' some damage was done by shot, though not of sufficient consequence to be specified." On the other two "the damage from this cause was unimportant." The work of raising these vessels was done under contract made with the Hongkong and Whampoa Dock Co., of Hongkong, China, as the necessary pumps and ordinary materials to be fouud in any first-class ship chandler's establishment were not to be obtained at Manila Bay. Work was begun on the "Isla de Cuba" on October 29, 1898, and she was floated on November 5. It was begun on the "Isla de Luzon" on November 6; was interrupted by a typhoon from the 9th to 14th, and the vessel was floated on the 15th. It was begun on the "Don Juan de Austria" on November 1, by several workmen doing preliminary work; pumping was started on the 23d early, and that vessel was afloat at 11.30 a. m. of that day. The vessels were then hauled up on the slip, all openings in the hulls were closed, they were cleaned up and overhauled sufficiently to put to sea under their own steam. Two of them started for Hongkong under their own steam December 19, and arrived there December 24. The other left January 16, 1899, and arrived
186 in Hongkong January 20. The repairs were completed at Hongkong, and all three vessels were commissioned in 1900, and are to-day in the U. S. Navy.

In behalf of the United States it is urged that those vessels, so far as the act of the United States fleet affected them, were sunk in Manila Harbor May 1, 1898; that such was their status then, and that the subsequent act of the Navy Department in raising and repairing them did not affect or change that status. And it is insisted that the libellant is not entitled to have an adjudication in prize, but is only entitled to bounty under the provisions of section 4635, R. S. That section reads:

4635. "A bounty shall be paid by the United States for each person on board any ship or vessel of war belonging to an enemy at the commencement of an engagement which is sunk or otherwise destroyed in such engagement by any ship or vessel belonging to the United States, or which it may be necessary to destroy in consequence of injuries sustained in action, of one hundred dollars if the enemy's vessel was of inferior force, and of two hundred dollars if of equal or superior force, to be divided among the officers and crew in the same manner as prize money; and when the actual number of men on board any such vessel can not be satisfactorily ascertained, it shall be estimated according to the complement allowed to vessels of its class in the Navy of the United States; and there shall be paid as bounty to the captors of any vessel of war captured from an enemy, which they may be instructed to destroy, or which is immediately destroyed for the public interest, but not in consequence of injuries received in action, fifty dollars for every person who shall be on board at the time of such capture."

The special attorney for the United States has supported his contention most ably and ingeniously by brief and argument, in which he goes into the history of bounty legislation, and shows that the libellant officially reported these vessels as destroyed, and that for other
187 vessels also reported destroyed, shown by the testimony to be susceptible of being raised, although not to such good advantage, the libellant has claimed and collected bounty. It is true that they were sunk and that efforts were made to destroy them by burning, but the burning was only partial because the vessels were submerged, and the sinking was only temporary and not beyond recovery. That they were raised and repaired and are now in the service of the United States are facts that seem to prove that they were not destroyed, but captured. Cavite arsenal was captured immediately after the battle of Manila, and these vessels, whose principal injuries were not from gun fire but from flames, came into the possession of the Navy. They were then easily susceptible of being raised, but the necessary pumps and other appliances were not at hand. Had they been raised and repaired without delay the case would have been plainly one of capture. Were they "sunk" in the sense in which that word is used in the statute? The expression is "sunk or otherwise destroyed," and the sense appears to be "destroyed" by sinking or otherwise, so as to be beyond recovery, valueless to the victor or to the conquered. The bounty appears to be a reward for the injury done the enemy, in lieu of the compensation that in case of capture might be derived from condemnation of the prize, and it was not intended to be paid for mere temporary disablement that could be readily remedied. Suppose that this historic naval battle had not resulted in
188 more than the overwhelming of the Spanish fleet; that Cavite had remained in the possession of Spain, and that Spain had raised these vessels and restored them to her Navy, could it be contended that they had been "sunk or otherwise destroyed" by the fleet under Admiral Dewey, and that he, his officers and men were entitled to bounty? The construction of the statute to me seems to be without difficulty. If anything were needed to settle the question whether these vessels were captured, or "sunk or otherwise destroyed," it might be found in the certified copies of their appraisement, furnished by the Secretary of the Navy upon the request of the court, contained in the record, giving under the head of "Appraisement of vessels of the U. S. Navy:"

"Valuation of U. S. S. 'Isla de Cuba,' November 1, 1899." "Captured Spanish vessel." Value, $221,200. Cost of repairs, including cost of raising, $112,000.

"Valuation of U. S. S. 'Isla de Luzon,' November 1, 1899." "Captured Spanish vessel." Value, $219,700. Cost of repairs, including cost of raising, $102,200.

"Valuation of U. S. S. 'Don Juan de Austria,' November 1, 1899." "Captured Spanish vessel." Value, $187,000. Cost of repairs, including cost of raising, $94,000.

I am of opinion that the libellant is entitled to an adjudication of one-half of the value of these vessels to the captors, such value
189 being the net value shown by the evidence, less the cost of repairs and cost of raising, it being conceded that the Spanish fleet alone was of inferior force, and that the question of the right to count the land

batteries, mines, and torpedoes as part of the Spanish force, under sec. 4630, R. S., U. S., was determined against libellant in Dewey v. U. S., '78 U. S., 510.

The next question in order of importance is, whether property captured on shore is subject to condemnation as prize. The capture of Cavite arsenal carried with it a large amount of arms, munitions of war, and material of all kinds suitable to be issued to ships, to provision, equip, and repair them. This property was appraised shortly after its capture, and proved to be of considerable value; much of it was used in the Navy between the time of capture and April 11, 1899, the date when the ratification of the treaty of peace between the two nations was exchanged. By the terms of the treaty, "stands of arms, uncaptured war vessels, small arms, guns of all calibers with their carriages and accessories, powder, ammunition, live stock, and materials and supplies of all kinds belonging to the naval forces of Spain in the Philippines and Guam remain the property of Spain." So much of it as then remained was transferred to Spain in January, 1901. Libellant claims the right to condemnation of all such property that was used by the Government.

Whether property captured on land by naval force operating from the sea is lawful prize has never been determined by the highest court in the land. In two cases decided by eminent jurists, one in a circuit court upon appeal and the other in a district court, one by Justice Story and the other by Justice Betts, many years apart, the affirmative of the
190 proposition was maintained. In the Emulous, 1 Gall., 575, Story, J., said: "The admiralty, therefore, not only takes cognizance of all captures made at sea, in creeks, havens, and rivers, but also of all captures made on land where the same have been made by a naval force, or by cooperation with a naval force." But this decision was reversed by the Supreme Court in Brown v. U. S., 8 Cranch, 110, upon other grounds, without considering this question, and in the Siren, 13 Wall., 389, it was held that a joint capture made by the Army and Navy of a seagoing vessel was not subject to condemnation as prize, and that captures made by naval force alone were only subjects of prize. The opinion of Justice Story is entitled to all the weight that his distinguished name will add to it, but as an adjudication it is discredited.

In the case of 282 Bales of Cotton, Blatch. Pr. Cas., 304 (the property had been captured on land), the court said: "A great part of the cotton seized had been employed in building fortifications in defense of the town." "This property having all been captured during the war, and being at the time employed by the enemy in actual aid of hostilities waged against the United States, and being enemy property, it is decreed to be subject to condemnation and forfeiture to the libellants." This decree was reversed in the circuit court for want of jurisdiction, and therefore the decision has no weight as an authority.

On the other hand, in U. S. v. 269½ Bales of Cotton, 1 Woolw., 236,
264, Miller, J., says: "Property on land is not without the aid of
191 the statute liable to capture and condemnation as prize of war," in a case that arose under the act of 1862, to which statute reference will be made later, and the remark by Justice Gray in delivering the opinion of the court in the Paquete Habana, 175 U. S., at p. 711, commenting upon Brown v. U. S., supra, that "the decision that enemy

property on land which by the modern usage of civilized nations is not subject to capture as prize of war can not be condemned by a prize court, even by direction of the Executive, without express authority from Congress," while probably obiter in that case, is a very weighty outgiving in favor of the negative of the proposition.

The libellant claims, in view of the repeal of section 2 of the act of July 17, 1862, 12 Stat., 606, by the act of June 30, 1864, that section 10 of the last named must be so construed as to include captures made on land. The first paragraph of that section is the same as section 4630, R. S., U. S., and reads:

"The net proceeds of all property condemned as prize shall, when the prize was of superior or equal force to the vessel or vessels making the capture, be decreed to the captors; and when of inferior force, one-half shall be decreed to the United States and the other half to the captors, except that in case of privateers and letters of marque the whole shall be decreed to the captors, unless it shall be otherwise provided in the commissions issued to such vessels."

Before adverting to evidences of intent in the use of the words, "all property condemned as prize," found in the statute, or to nearly contemporaneous legislation, or to the policy of Congress in prize matters
192 evinced in prior enactments upon that subject, it will be useful to quote from the opinion by Justice Swayne in the Siren, supra.

"Prize was wholly the creature of the Crown. No one could have any interest but what he took as the gift of the King. Beyond this he could claim nothing. The reasons upon which the rule was founded were, that right of making war and peace was exclusively in the sovereign; that the acquisitions of war must therefore belong to him, and that their disposal might be of the utmost importance for the purposes both of war and peace. It was held that it must be presumed from these considerations that the Government did not intend to divest itself of this important attribute except in so far as such a purpose was clearly and unequivocally expressed. The right is not the private property of the sovereign, but a trust confided to him for the public good. In private grants the construction is most strongly against the grantor. In all concessions touching capture the opposite rule prevails. A presumption arises against the grant, and it can only be rebutted by language so explicit as to leave no room for doubt upon the subject." (The Elsebe, 5 Rob., 155.) "In our jurisprudence there are, strictly speaking, no droits of admiralty. The United States have succeeded to the rights of the Crown. No one can have any right or interest in any prize, except by their grant or permission. All captures made without their express authority inure ipso facto to their benefit. Whenever a claim is set up, its sanction by an act of Congress must be shown. If no such act can be produced, the alleged right does not exist. The United States take captured property not as droits but jure reipublicae."

While the review of the various English decisions in which the question has been considered whether property on land captured by naval force is lawful prize, ably presented in the briefs, is historically interesting, it will serve no useful purpose to attempt to reconcile those cases with our statutes, or construe the statutes with reference to them. The statute appears to be clear.

193 The act of June 30, 1864, is entitled "An act to regulate prize proceedings and the distribution of prize money, and for other purposes." It is embodied in Title 54, R. S. U. S., sections 4613 to 4652. In so embodying it some of the sections have been divided, and the original sequence of the sections has been changed, but this has been done "for the purpose of a more convenient and orderly arrangement of the same, and therefore no inference or presumption of a legislative construction is to be drawn therefrom." (Sec. 5600, R. S.) It will prove to be very useful in construing the words "all property condemned as prize" to refer to the act itself, and to examine the preceding nine sections for such light upon the intent of Congress as they may afford.

Section 1 reads:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be the duty of the commanding officer of any vessel or vessels making a capture to secure the documents of the ship and cargo, including the log book, with all other documents, letters, and other papers found on board, and make an inventory of the same, and seal them up, and send them, with the inventory, to the court in which proceedings are to be had, with a written statement that they are all the papers found, and in the condition in which they were found, or explaining the absence of any documents or papers, or any change in their condition. He shall send to said court, as witnesses, the master, one or more of the other officers, the supercargo, purser, or agent of the prize, and any person found on board whom he may suppose to be interested in, or to have knowledge respecting, the title, national character, or destination of the prize. He shall send the prize, with the documents, papers, and witnesses, under charge of a competent prize master and prize crew, into port for adjudication, explaining the absence of any usual witnesses; and in the absence of instructions from superior authority as to the port to which it shall be sent he shall select such port as he shall deem most convenient in view of the interests of probable claimants, as well as of the captors.

194 If the captured vessel, or any part of the captured property, is not in condition to be sent in for adjudication, a survey shall be had thereon and an appraisement made by persons as competent and impartial as can be obtained, and their reports shall be sent to the court in which proceedings are to be had; and such property, unless appropriated for the use of the Government, shall be sold by the authority of the commanding officer present, and the proceeds deposited with the assistant treasurer of the United States most accessible to said court, and subject to its order in the cause."

Obviously the word "prize," used three times in the latter portion of the section, means "ship and cargo." And the proviso that "if the captured vessel, or any part of the captured property, is not in condition to be sent in for adjudication a survey shall be had," &c., refers to the same subject—the "ship" or any part of the "cargo."

Section 2 provides "That if any vessel of the United States shall claim to share in the prize" the commanding officer of such vessel shall make out a statement of his claim.

Section 3 requires the "prize master" to take diligent steps to reach

the selected port and deliver to the prize commissioner the documents and papers, and "report to the district attorney, and give to him all the information in his possession respecting the prize and her capture."

Section 4 requires "the attorney of the United States for the district" to "immediately file a libel against such prize property."

Section 5 provides for the appointment of prize commissioners,
195 and requires of them that they "shall protect the interests of the captors and of the Department of the Navy in the prize property."

Section 6 prescribes the duties of prize commissioners in taking testimony, and provides that

"They shall also, as soon as any prize property comes within the district for adjudication, examine the same and make an inventory thereof, founded on an actual examination, and report to the court whether any part of it is in a condition requiring immediate sale for the interests of all parties, and notify the district attorney thereof; and if it be necessary to the examination or making of the inventory that the cargo be unladen they shall apply to the court for an order to the marshal to unlade the same, and shall from time to time report to the court anything relating to the condition of the property, or its custody or disposal, which may require any action by the court; but the custody of the property shall be only in the marshal. They shall also seasonably return into court, sealed and secured from inspection, the documents and papers which shall come to their hands, duly scheduled and numbered, and the other preparatory evidence, and the evidence taken de bene esse, and their own inventory of the prize property; and if the captured vessel or any of its cargo or stores are such that in their judgment may be useful to the Government in war, they shall report the same to the Secretary of the Navy."

Section 7 provides "that the marshal shall safely keep all prize property under warrant from the court, and shall report to the court any cargo or other property that he thinks requires to be unladen and stored, or to be sold."

Section 8 provides for sale by order of the court "whenever any prize property shall be condemned, or shall at any stage of the proceeding be found by the court to be perishing or perishable," &c.

Section 9 provides "that in case a decree of condemnation
196 shall be rendered the court shall consider the claims of all vessels to participate in the proceeds." That "the court shall make a decree of distribution determining what vessels are entitled to share in the prize, and whether the prize was of superior, equal, or inferior force to the vessel or vessels making the capture."

Manifestly the word "prize," and the words "prize property," wherever used in these several sections mean "ship and cargo," or ship or vessel, or the cargo or stores carried by her. The statute in these nine sections does not by any word or words indicate that other property than vessel and cargo shall be the subject of prize. In the latter part of section 6 that is most plainly shown, where, after requiring of the prize commissioners the return to court of documents, papers, evidence, and their own inventory of the prize property, the section concludes, "and if the captured vessel, or any of its cargo or stores are such that in their judgment may be useful to the Government in war, they shall report the same to the Secretary of the Navy."

The words "all property condemned as prize" used in section 10, necessarily refer to the property described as "prize" in the preceding sections, for which condemnation is to be had, and for which condemnation the procedure is prescribed. That section is only a provision for the distribution of the net proceeds of the prize after condem-
197 nation. There is no apparent legislative purpose to enlarge the scope of "prize" as fixed by the earlier sections. The fact that it awards to the captors the net proceeds of the prize if of equal or superior force to the vessel or vessels making the capture, and one-half to them and the other half to the United States if of inferior force, gives added certainty to the claim that prize means "ship" or "vessel" and "cargo." No provision whatever is made for the distribution of other property not associated with a captured vessel, and if "prize" includes property captured on land, whether the captors take the whole or part of the proceeds is left entirely to conjecture. The legislative intent gathered from the whole statute excludes from "prize" property captured on land.

It is claimed that the intent to broaden the scope of prize limited in section 2 of the act of July 17, 1862, to "ships and vessels and the goods taken on board of them" is shown by the specific repeal of that section by the act under consideration, and by making the provisions of the act apply to all captures made as prize by authority of the United States, or adopted and ratified by the President of the United States." It does not appear just why sections 2, 6, and 12 are mentioned specifically as being repealed, when other sections of the former act are embodied in the latter in whole or in part, and the repealing clause, after specifying other acts, provides that "all other acts and parts of acts inconsistent herewith are expressly repealed." Section 2 of the former was
198 evidently substituted by section 10 of the latter, and if there were any inconsistency between them, section 2 was repealed both expressly and by implication. But the meaning of "prize" is so clearly indicated in section 1 and section 6 of the latter act to be "ship and cargo," or "vessel and its cargo or stores," and identical with "ships and vessels and the goods taken aboard of them" of the former, that it is not possible by mere circumstance of express repeal to import into the word "prize" a meaning sufficiently enlarged to include something not expressed. So of extending the provisions of the act to all captures made as prize. Changes had been made both in procedure and in the distributive rights, and the provisions were made to apply to all captures that had then been made in which, presumably, no judicial proceedings had been taken, and by the next section, 34, it was made to "apply to all prize proceedings now pending." It was clearly intended to be retroactive. No legitimate claim can be made that this section, one of the last of the original act, and made the first under "title 54, prize," R. S., U. S., was intended by Congress to extend the right of prize to all captured property that might be appropriated by the United States jure reipublicae. There is a presumption against the grant of the right. "Whenever a claim is set up its sanction by an act of Congress must be shown. If no such act can be produced, the alleged right does not exist." (The "Siron," supra.)

199 This construction is strengthened by contemporaneous legislation.

The captured and abandoned property act of March 12, 1863, 12 Stat., 820, provided for the appointment of agents by the Secretary of the Treasury to receive and collect all abondoned and captured property in States declared to be in insurrection, and contained this proviso, "that such property shall not include any kind or description which has been used, or which was intended to be used, for waging or carrying on war against the United States, such as arms, ordnance, ships, steamboats, or other water craft, and the furniture, forage, military supplies, or munitions of war."

The act of July 2, 1864, section 7 (12 Stats., 377), provided as follows: "That no property seized or taken upon any of the inland waters of the United States by the naval forces thereof, shall be regarded as maritime prize; but all property so seized or taken shall be promptly delivered to the proper officers of the courts, or as provided in this act, and in the said act approved March 12, 1863."

The act of March 12, 1863, expressly excluded from its provisions arms, ordnance, forage, military supplies and munitions of war, as well as ships, steamboats and other water craft, and property of any kind or description used or intended to be used for carrying on the war. The act of July 2, 1864, excepted from maritime prize all property seized or taken upon the inland waters of the United States. Having excluded
200 floating property, but having failed to exclude property on land, would it be contended that under the broad expression, "all property condemned as prize," Congress intended that property captured on land by naval forces operating from inland waters should be maritime prize? The act of July 2, 1864, appears to be an indication that the legislative understanding of the act of June 30, passed only two days before, was that property captured on land was not thereby made maritime prize.

The earlier legislation is instructive as to the policy of Congress. There appear to have been four acts allowing the captors to participate in prize. The first is the act of March 2, 1799, 1 Stat., 709, which provided "That all captured national ships or vessels of war shall be the property of the United States; all other ships or vessels being of superior force to the vessel making the capture in men or guns, shall be the sole property of the captors, and all ships or vessels of inferior force shall be divided equally between the United States and the officers and men of the vessel making the capture."

The second is the act of April 23, 1800, 2 Stat., 45, which provided in article 7 that, "the commanding officer of every ship or vessel in the Navy, who shall capture or seize upon any vessel as a prize, shall carefully preserve all the papers and writings found on board and
201 transmit the whole of the originals unmutilated to the judge of the district to which such prize is ordered to proceed."

This is the only section that specifies what may be taken as prize.

Article 8 imposes a penalty upon any person in the navy taking out of a prize, before it is adjudged lawful prize by a competent court, any money, goods, rigging, or plate.

The third and fourth are the acts of July 17, 1862, and June 30, 1864, already considered. Property captured upon land is as clearly excluded from the acts of 1799 and 1800, as it is from the act of 1862. In apply-

ing the last-named act to the circumstances of the case, the Supreme Court in Mrs. Alexander's Cotton, 2 Wall., 404, a case of joint capture of enemy cotton on land by land and naval forces, while sustaining the lawfulness of the capture, said of the reasoning which supported it, it "by no means warrants the conclusion that the property captured was maritime prize. We have carefully considered all the cases cited by the learned counsel for the captors, and are satisfied that neither of them is authority for that conclusion. In no one of these cases does it appear that private property on land was held to be maritime prize." "But it is hardly necessary to go into these English adjudications, as our own legislation supplies all needed guidance in the decision of this case."

202 "There is certainly no authority to condemn any property as prize for the benefit of the captors, except under the law of the country in whose service the capture is made, and the whole authority found in our legislation is contained in an act for the better government of the Navy, approved July 17, 1862." * * "By the 2nd section of this act it is provided that the proceeds of all ships and vessels and the goods taken on board of them shall be adjudged good prize." * * * "The act excludes property on land from the category of prize for the benefit of captors, and seems to be decisive of the case so far as the claims of captors are concerned." The court then refers to the act of July 2, 1864, which abolished prize on inland waters, and said of it, "It is cited only in illustration of the general policy of legislation to mitigate as far as practicable the harshness of the rules of war."

This case was decided March 10, 1865. The failure to mention the act of June 30, 1864, now claimed to make maritime prize of property captured on land, is significant.

In U. S. v. 269½ Bales of Cotton (supra), 264, the suit was for the adjudication of rights claimed under the act of 1862. It was decided in 1868, subsequent to the case of Mrs. Alexander's Cotton. Justice Miller. He does not mention the act of June 30, 1864.

203 I am of opinion that property captured on land was not intended to be made maritime prize; that it is excluded by the terms of the act from which the right is sought to be derived, and that the libellant is not entitled to adjudication in prize of the appraised value of such property appropriated by the United States.

This renders unnecessary the consideration of the effect of the treaty with Spain upon the rights of libellant.

The next question is whether libellant is entitled to condemnation in prize of the value of property taken from vessels sunk or otherwise destroyed.

In behalf of the United States it is objected that, inasmuch as libellant has received bounty for the destruction of these vessels under section 4635, he is not entitled, as prize, to property taken from them; that bounty is "a substitute for the prize itself" (The "Selma," 1 Low, 30)—something given "in lieu of it" (Porter v. United States, 106 U. S., 607). Bounty is given in lieu of prize only in the case of a ship or vessel of war belonging to an enemy which is sunk or otherwise destroyed, or which it may be necessary to destroy in consequence of injuries received in action. It is proportioned not to the value of the ship, or of its armament or munitions, but to the number of persons on board of her

at the commencement of an engagement. While it may be true that the original idea was that the amount so ascertained would
204 be a fair substitute for the prize itself, and such idea may have been not far wrong in the days of wooden vessels of war, yet in these days of steel-armored cruisers and battle ships, with all of their expensive appliances, the highest amount of bounty allowed is very inconsiderable compared with the value of the ship sunk or destroyed. It is not an equivalent for prize. There is, therefore, no reason arising out of the amount paid as bounty that would justify the claim that, in fairness, such reward should be exclusive.

The reward is apparently bestowed for the injury done to the enemy in the loss of fighting power; it matters not how valuable may be the appliances and outfit that go down with her or that are involved in her destruction.

If the vessel were captured, the cargo or outfit and appliances would enter into the estimate of the total value. I find nothing in the statute to prohibit the condemnation in prize of property captured or taken from ships sunk or destroyed in addition to bounty paid for the destruction of the ship, and I am of opinion that it should be allowed.

The last question, the right to condemnation of cascos and floating derricks as prize, is not free from difficulty.

The cascos were cargo boats used in discharging cargoes of ships anchored in the bay. They varied in capacity from 30 to 60 tons,
205 and their value in Mexican silver was from $1,500 to $1,800 apiece. They had a capacity of about 140 tons of coal, and were propelled by sweeps and by poling. They were private property, owned probably by native Filipinos, some of whom had put in a claim against the Government for their appropriation. They were appropriated to the use of the Government. The floating derricks were flatboats, the larger one being about 40 feet long, 15 feet wide, and capable of lifting a weight of about seven tons. They had no means of propulsion. They were also appropriated to the use of the United States. Neither casco nor floating derrick was a sea boat. They could stand ordinary harbor seas, but were not intended for other than harbor service, and it would have been impossible to have put a prize crew aboard of them and have sent them to the nearest neutral port for adjudication.

Clearly, neither casco nor floating derrick was a ship or vessel in the sense in which those terms are used in the act of 1864. Such only, with their cargoes or stores, are recognized as lawful prize. True it is that through the power of the Navy they were appropriated to the use of the United States, and that the Government has had the benefit of the appropriation, but that does not determine the right of prize. That right, if it exists at all, exists by reason of a statute giving it. "A presumption arises against the grant, and it can only be rebutted by language so
206 explicit as to leave no room for doubt upon the subject." (The "Siren," supra.)

The battle of Manila Bay occurred May 1, 1898. An inventory and appraisement of property captured and appropriated for the uses of the Government by the squadron, under command of Rear-Admiral Dewey, in accordance with section 4624, Rev. Statutes, U. S., was made by a naval board of appraisal and survey August 24, 1898. Neither

cascos nor floating derricks are listed in it. The testimony as to capture, description, value, use, appropriation of these craft, is very meagre and unsatisfactory. As an element of claim in prize it is so much of an afterthought as not to be mentioned in the original libel, or in libellant's original brief. In The Paquete Habana, 175 U. S., 677, as to two fishing vessels captured as prize, one 43 feet long and the other 51 feet long, which were regularly engaged in fishing on the coast of Cuba, sea-going vessels, each one owned by a Spanish subject residing in Havana, the crew not being interested in the vessel, but entitled to shares in the catch, the cargo consisting of fresh fish, it was held that both captures were unlawful and without probable cause, as by the general consent of the civilized world, and independently of any express treaty, "it is an established rule of international law, founded on considerations of humanity to a poor and industrious order of men and of the mutual convenience of belligerent States, that coast fishing vessels, with their implements and supplies, cargoes, and crews, unarmed and honestly
207 pursuing their peaceful calling of bringing in fresh fish, are exempt from capture as prize of war."

In that case the exemption was declared as to property clearly within the description of prize property in the act of 1864. In this case, with the same humane considerations for exemption attaching, I am of opinion that the property alleged to have been appropriated by the United States is not lawful prize under this act, and that so much of the claim of libellant should be rejected.

A decree should be drawn conforming to this opinion.

208 DECREE OF CONDEMNATION AND DISTRIBUTION.

[Filed November 5, 1901.]

In the supreme court of the District of Columbia.

GEORGE DEWEY, ADMIRAL, UNITED STATES Navy, on behalf of himself and the officers and crew of the U. S. naval force on the Asiatic Station, taking part in the battle of Manila Bay, May 1, 1898, v. THE "DON JUAN DE AUSTRIA," "ISLA DE CUBA," "Isla de Luzon," "Leyte," "Mindanao," and other vessels and miscellaneous stores and supplies, captures by the fleet under command of libellant.	No. 559, district court.

This cause came on to be heard upon the libel filed on the 20th day of July, 1899, and the several amendments thereto made by leave of court, and upon the answer of the United States to the libel and amended libel and the separate answer of the Secretary of the Navy, and the intervening libel of Edwin F. Stovell, and upon the proofs, documentary and otherwise, submitted by the libellant and the United States, and upon written and oral argument.

Upon due consideration of the premises it appears to the court that the whole of the property sought to be condemned as prize in this case, except such property as may have been restored to private owners, has been appropriated to the use of the United States, and that no part of it has been or can be sent in for adjudication, and that the Secretary of the Navy did not, within three months after the capture, designate a district for the institution of proceedings.

209 Now, therefore, it is, this 5th day of November, 1901, ordered, adjudged, and decreed that the following property alleged in the libel herein filed to be prize and duly established by the proofs is lawful prize of war, and is condemned and forfeited to the United States as such prize subject to the rights of the captors therein as provided by law, to wit:

The protected cruisers Isla de Cuba and Isla de Luzon, the unprotected cruiser Don Juan de Austria, the transport Manila, and all other vessels belonging to the King of Spain or his subjects, captured by the naval forces of the United States under the command of the libellant on or about the 1st day of May, 1898, and more fully set forth in the appraisement made by order of the commanding officer of the United States naval force on the Asiatic Station on the 24th day of August, 1898, except such as may have been restored to private owners, and all machinery, tackle, equipment, supplies, and other articles of whatever nature belonging to the King of Spain or his subjects, captured on or about the 1st day of May, 1898, as aforesaid, which were upon or belonged to any of said enumerated vessels or upon or belonged to any of the other vessels belonging to the King of Spain which were, on the 1st day of May, 1898, sunk or otherwise destroyed by the naval forces of the United States under command of the libellant.

And it is further ordered, adjudged, and decreed, that the property belonging to the King of Spain captured on shore at the arsenal at Cavite or elsewhere, and all nonseagoing boats or craft afloat per-

210 taining to the said arsenal, was and is not subject to condemnation in prize, and that as to all property captured ashore the libel herein is dismissed.

And it is further ordered, adjudged, and decreed, that certain cascos and floating derricks referred to in the amendment to the libel herein filed on the 23rd day of April, 1901, as aforesaid, not the property of the King of Spain, but of subjects of said King or of other neutral powers, were and are not subject to condemnation in prize, and that as to such property the libel herein is dismissed.

And it is further ordered, adjudged, and decreed, that the vessels entitled to share in the prize property aforesaid are the United States flagship "Olympia," the United States protected cruisers "Baltimore," "Boston," and "Raleigh," the United States gunboats "Concord" and "Petrel," and the United States revenue cutter "McCullough;" and that the "Nanshan" and "Zafiro," not participating in any of said captures and not being armed vessels of the United States within signal distance of the vessel or vessels making the capture, under such circumstances and in such conditions as to be able to render effective aid, if required, are not entitled to share in any of the prize property; and that the prize aforesaid, being the vessels and other property captured afloat, was of inferior force to the vessels making the capture.

And it is further ordered and adjudged that upon the ascertainment of the value of the property so condemned as prize the Secretary of the Navy shall deposit an amount equal thereto with the Treasurer of the United States, subject to further orders of this court in this cause.

A. C. BRADLEY, *Justice.*

211 APPEAL BY UNITED STATES TO SUPREME COURT OF THE UNITED STATES.

[Filed Nov. 7, 1901.]

In the supreme court of the District of Columbia.

GEORGE DEWEY, ADMIRAL, UNITED STATES Navy, on behalf of himself and the officers and crew of the United States naval force on the Asiatic station, taking part in the battle of Manila Bay on May 1, 1898, and later captures at the same place,
vs.
THE "DON JUAN DE AUSTRIA," "ISLA DE Cuba," "Isla de Luzon," "Leyte," "Mindanao," and other vessels and miscellaneous stores and supplies captured by the fleet under command of libellant. } No. 559, district court.

Comes now the United States of America, by its Attorney-General, and from the decree of this honorable court entered on the 5th day of November, 1901, gives notice of and makes application for an appeal to the Supreme Court of the United States.

CHARLES C. BINNEY,
Special Attorney for the United States.

212 WAIVER OF CITATION.

[Filed November 7, 1901.]

In the supreme court of the District of Columbia.

GEORGE DEWEY
v.
THE "DON JUAN DE AUSTRIA," &c. } No. 559, district court.

Service of notice of the appeal of the United States from the decree of the supreme court of the District of Columbia in this cause, entered the 5th day of November, 1901, is hereby accepted and citation waived.

HERBERT & MICOU,
Proctors for Libellant.

CHAS. W. CLAGETT,
Proctor for Edwin F. Stowell.

213 APPEAL BY GEORGE DEWEY TO SUPREME COURT OF THE UNITED STATES.

[Filed Nov. 15, 1901.]

In the supreme court of the District of Columbia.

GEORGE DEWEY, ADMIRAL, UNITED STATES Navy, on behalf of himself and the officers and crew of the United States naval forces on the Asiatic station, *vs.* THE "DON JUAN DE AUSTRIA" AND OTHER prize property.	No. 559, district court.

Now comes George Dewey, Admiral, United States Navy, the libellant in the above-named cause, and appeals from the decree of this court, entered in this case on the 7th day of November, 1901, to the Supreme Court of the United States, and prays for the allowance of such appeal.

HERBERT & MICOU,
WILLIAM B. KING,
Proctors for Libellant.

We hereby waive all notice of the aforesaid appeal or citation and of the giving of an appeal bond.

CHARLES C. BINNEY,
Special Attorney for the United States.
CHAS. W. CLAGETT,
Proctor for Edward F. Stovell.

214 APPEAL BY EDWIN F. STOVELL TO THE SUPREME COURT OF THE UNITED STATES.

[Filed April 10, 1902.]

In the supreme court of the District of Columbia.

GEORGE DEWEY, ADMIRAL UNITED STATES Navy, on behalf of himself and the officers and crew of the United States naval force, etc., *vs.* THE "DON JUAN DE AUSTRIA," ETC.	District court, No. 559.

Edwin F. Stovell, intervenor.

Now comes Edwin F. Stovell, intervenor in the above-entitled cause, and on his own behalf, and on behalf of the officers and crew of the United States steamship "Nanshan," appeals to the Supreme Court of the United States from so much of the decree rendered in the above-entitled cause on the fourth day of November, 1901, as denies the right of the officers and men of the United States steamship "Nanshan" to share in the prize money accruing out of the battle of Manila of May 1st, 1898.

CHAS. W. CLAGETT,
Proctor for Edwin F. Stovell.

We hereby waive service of citation on the appeal in the above cause.

CHARLES C. BINNEY,
Proctor for the United States.

HERBERT & MICOU,
GEORGE A. & WM. B. KING,
Proctors for the Officers and Men of the United States Navy.

215 The appeal in the above case having been inadvertently taken to the court of appeals of the District of Columbia, we hereby waive the delay in taking the appeal to the Supreme Court of the United States, April 9th, 1902.

CHARLES C. BINNEY,
Proctor for the United States.

HERBERT & MICOU,
GEORGE A. & WM. B. KING,
Proctors for the Officers and Men of the United States Navy.

MEMORANDUM.

APRIL 11, 1902.

$25.00 deposited by E. F. Stovell, in lieu of appeal bond, by leave of court.

215½ ORDER ALLOWING APPEALS.

[Filed April 17, 1902.]

In the supreme court of the District of Columbia.

GEORGE DEWEY, ADMIRAL UNITED STATES Navy, *vs.* THE "DON JUAN DE AUSTRIA" AND OTHER prize property.	No. 559, District court.

Upon presentation of the appeals to the Supreme Court of the United States, heretofore filed in this cause, on behalf of the several parties hereto, to wit: The United States, the libellant, George Dewey, and the intervenor, Edward F. Stovell, the several parties waiving citation, or notice of appeal, the said appeals are, this seventeenth day of April, 1902, allowed as prayed.

A. C. BRADLEY,
Justice.

216 DIRECTIONS TO CLERK FOR PREPARATION OF TRANSCRIPT.

[Filed Apr. 10, 1902.]

In the supreme court of the District of Columbia.

GEORGE DEWEY, ADMIRAL U. S. N., ETC.,
vs.
THE SPANISH VESSELS OF WAR "DON Juan de Austria," "Isla de Cuba," "Isla de Luzon," etc. } No. 559, District court.

JOHN R. YOUNG, Esq.,
Clerk Supreme Court of the District of Columbia.

SIR: In preparing transcript of the record in the appeal of the United States to the Supreme Court of the United States from the decree entered November 5th, 1901, in the above-entitled cause you will please include the following papers only:

1. Libel.
2. Order for process.
3. Monition.
4. General notice.
5. Answer of the United States.
6. Replication.
7. Answer of the Secretary of the Navy.
8. Stipulation as to evidence.
9. Amendment to answer of United States.
10. Amendment to libel.
11. Second amendment to answer of United States.
12. Second amendment of libel.
13. Printed evidence.
14. Stipulation as to amendment.
15. Decree.
16. Opinion.
17. Appeal.
18. Waiver of citation.

Very respectfully,

CHARLES C. BINNEY,
Special Attorney for the United States.

We concur in the above request, and desire that the appeal of George Dewey be also included.

HERBERT & MICOU,
Proctors for Libellant.

GEORGE A. & WM. B. KING,
Proctors for Various Officers and Men.

217 Supreme court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 216, inclusive,

to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 559, District court, George Dewey, Admiral United States Navy, &c., et al., vs. the "Don Juan de Austria," "Isla de Cuba," "Isla de Luzon," "Leyte," "Mindanao," &c., as the same remains upon the files and of record in said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, the 17th day of April, A. D. 1902.

[SEAL.] JOHN R. YOUNG,
Clerk.

(Indorsement on cover:) File No., 18507. District of Columbia, supreme court. Term No., 654. The United States, appellant, vs. George Dewey, Admiral U. S. Navy, &c. File No., 18508. Term No., 655. George Dewey, Admiral U. S. Navy, appellant, vs. The "Don Juan de Austria," et al. File No., 18509. Term No., 656. Edwin F. Stovell, on behalf of himself and officers and crew of the U. S. steamship "Nanshan," appellant, vs. George Dewey, Admiral U. S. Navy, &c. Filed April 22, 1902. Office Supreme Court of U. S. Received Apr. 18, 1902.

O

COURT OF CLAIMS.

NAVAL BOUNTY, Nos. 1 and 3893.

ENGAGEMENT AT MANILA BAY.

EDWIN F. STOVELL v. UNITED STATES.

AUDITOR'S SECOND PRELIMINARY REPORT AND PAPERS RELEVANT TO SAME.

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H. M. CAVIS,
Auditor.

CHARLES W. CLAGETT,
Attorney for Edwin F. Stovell.

HERBERT & MICOU,
CHARLES & WILLIAM B. KING,
Attorneys for Officers and Men of the Navy.

In the Court of Claims.

ENGAGEMENT AT MANILA BAY, NAVAL BOUNTY, NO. 1.

AUDITOR'S SECOND PRELIMINARY REPORT.

Case of Edward F. Stovell, who has filed a claim, No. 3893, to share in the bounty. Stovell was captain of the original crew of the *Nanshan*, and a decision in his case determines the right of all other officers and men of the original crews of both the *Nanshan* and *Zafiro* to share in the bounty.

20869—01——1

By original crews is meant the officers and men hired by Admiral Dewey, as hereinafter stated, but who were not commissioned nor enlisted in the United States Navy.

Referring to the reply of the Navy Department, filed in court March 18, 1901; to the report of the Navy Department, filed March 21, 1901, and to the copy of Admiral Dewey's indorsement, dated March 16, 1901, attached; to the deposition of Ben. W. Hodges, filed March 23, 1901; to the report of the Treasury Department, filed March 27, 1901; to a reply of the Treasury Department, filed April 6, 1901, and to my attested copies of papers in the office of the Auditor for the Navy Department, Treasury Department, relative to the purchase of said ships, filed by me herewith, I respectfully submit the following report:

To both the *Nanshan* and *Zafiro* were attached a commissioned officer and four enlisted men of the United States Navy. These two officers and eight men were temporarily absent on duty from the *Olympia*, and will be included in the prize list of that vessel.

The *Nanshan* and *Zafiro* were British merchant vessels, purchased by Admiral Dewey, at Hongkong, under authority from the Secretary of the Navy, in April, 1898. The bills of sale state and receipt for the purchase price, technically describe the ships, and transfer the ownership, and that is all, and there are no other contracts or memoranda of particulars on file relative to said purchase.

The vessels were not commissioned, but were registered as American steamers, and the original crews were shipped in the American merchant service; of the original crews, no officer was commissioned and no man was enlisted in the United States Navy.

The original crews were employed to handle the ships, and on account of the probable nature of what was to occur at Manila, they, both officers and men, were promised and received double the wages they had theretofore been paid in the British merchant service. They were not rated in the United States Navy, and these double wages were not the rates of pay in the service fixed by the President under Revised Statutes, section 1564. This arrangement in regard to wages was wholly a verbal one, made by Admiral Dewey with the original officers of the *Nanshan* and *Zafiro*, and no written contract or memoranda of particulars exists.

A monthly list of the names and wages of the original crews, in Mexican money, was made out by the original captains or masters of these two ships, the aggregate amount of which they received from the pay inspector of the fleet in a lump sum and receipted therefor in a lump sum, reduced to the value of American gold, which money said original captains or masters distributed to their original crews, all as appears by the reply of the Treasury Department, filed April 6.

The terms used to designate the ranks and ratings of these original crews differ in most instances from those employed in our Navy, therefore which, if any, in the two cases are relatively equivalent can not well be determined, nor a comparison be made between the individual wages of these original crews and the respective rates of pay of commissioned officers and enlisted men in the United States Navy. A year's wages (the basis on which bounty will be distributed) of the *Nanshan*, taking the month of May, 1898, for a factor, and reduced to American gold, would be $24,987.96, and of the *Zafiro* $17,643.67.

These original crews were "doing duty on board" the *Nanshan* and *Zafiro* at the time of the battle; whether they were "borne upon the books" of those vessels, and whether they had "respective rates of pay in the service" within the meaning and intent of the statute are questions respectfully submitted to the court.

The following questions are also submitted and the instruction of the court requested:

Is Stovell, and are the other officers and men of the original crews of the *Nanshan* and the *Zafiro*, entitled to share in the bounty?

If it is held that they are entitled, upon what basis shall their respective shares be computed? Shall it be upon the basis of their respective wages as shown in the reply of the Treasury Department, filed April 6?

And further, if these original crews are entitled, what shall be the status of the original captains or masters—Stovell of the *Nanshan* and Whitton of the *Zafiro*? Shall they be considered as "commanding officers" and take one-tenth of the total amount awarded their respective vessels, or shall they share upon the basis of their wages in proportion to the wages of the other members of the original crews?

Lieutenant Hodges, the United States naval officer detailed from the *Olympia* to the *Nanshan*, had general charge of that vessel, executed all orders from the flagship, controlled the movements of the *Nanshan*, had charge of handling the guns and the signaling. Stovell had charge of the internal management and discipline of the ship, and such things as loading and discharging cargo. It seems clear that as Hodges was the representative of the Admiral, Stovell would have been obliged to obey any order given by Hodges, and it can not be supposed that Hodges would have had to obey Stovell in any matter.

In this connection I also refer to Stovell's amended petition, filed April 2, in which he says "that said vessel was, on and after said 1st day of May, 1898, under the command of Ben. Hodges, a lieutenant in the United States Navy." This seems to be conclusive that Hodges was the commanding officer of the *Nanshan*.

I am advised that counsel intend to ask the court to reconsider its finding of fact in the Dewey case, that the *Nanshan* and *Zafiro* are entitled to participate in the bounty.

If the court reopens and reverses that finding then no question remains. The commissioned officers and enlisted men of the United States Navy on board these two vessels share in the *Olympia's* portion of the bounty and the whole matter of the *Nanshan* and *Zafiro* would disappear.

Stovell is the only member of either of said original crews who has filed a claim.

Respectfully submitted, April 9, 1901.

HARRY M. CAVIS,
Auditor.

WASHINGTON, *July 16, 1898.*

SIR: The Bureau requests an allotment of $243,325.00, under appropriation "Emergency Fund, Navy Department," to cover the purchase of the steamers *Nanshan* and *Zafiro*, purchased by Pay Inspector D. A.

Smith, U. S. N., under the directions of Admiral Dewey, for use in the Asiatic Station.

Respectfully,

EDWIN STEWART,
Paymaster-General, U. S. N.

Nanshan.....$155,728.00.
Zafiro..... 87,597.00.

The SECRETARY OF THE NAVY,
NAVY DEPARTMENT.

Approved July 18, 1898.

JOHN D. LONG,
Secretary of the Navy.

True copy.
N. S. FAUCETT, *Chief Clerk.*

WASHINGTON, *July 16, 1898.*

SIR: Referring to your letter No. 349 of June 30th to the Secretary regarding Pay Inspector Smith's fleet account for the month of April, please charge vouchers covering the purchase of the steamers *Nanshan* and *Zafiro*, amounting to $243,325.00, to appropriation "Emergency Fund, Navy Department," January 1, 1899, as per allotment approved by the Secretary, copy herewith enclosed. All the remaining vouchers should be charged to the regular appropriations under the cognizance of the several Bureaus.

In cases where the annual appropriations for 1898 have become exhausted, the deficiency appropriations carried by the General Deficiency Bill approved July 7th should be charged.

Respectfully,

EDWIN STEWART,
Paymaster-General, U. S. N.

The AUDITOR FOR THE NAVY DEPARTMENT,
Washington, D. C.

WASHINGTON, *December 12, 1898.*

SIR: 1. The Bureau encloses herewith the vouchers enclosed with your letter No. 349 of the 9th instant, pertaining to the account of Pay Inspector D. A. Smith for the fourth quarter of 1898. The bills are properly chargeable to the appropriation "Emergency Fund, Navy, Jan. 1, 1899."

2. It is not entirely clear to the Bureau what connection its letter No. 30123 of July 16th to the Portsmouth Yard, referred to in your letter, has with these bills.

Respectfully,

EDWIN STEWART,
Paymaster-General, U. S. N.

AUDITOR FOR THE NAVY DEPARTMENT.

Bill of sale.

Official number, 88829. Name of ship, *Zafiro*. No., date, and port of registry, No. 10 of 1885, Hongkong.

Whether a sailing or steam ship, steamer. Horsepower of engines, if any, 184.

Length from forepart of stem, under the bowsprit to the aft side of the head of the stern post, 213.70 feet.

Main breadth to outside of plank, 31.85 feet.

Depth from top of deck at side amidships to bottom of keel, ——.

Number of tons, gross, 1,062.09; registered, 675.44.

We, the China and Manila Steamship Company, Limited, in consideration of the sum of eighteen thousand pounds sterling, paid to us by George Dewey, of Washington, U. S. A., the receipt whereof is hereby acknowledged, transfer sixty-four shares in the ship above particularly described, and in her boats, guns, ammunition, small arms, and appurtenances, to the said George Dewey.

Further, we the said China and Manila Steamship Company, limited, for ourselves and our heirs, covenant with the said George Dewey and his assigns that we have power to transfer in manner aforesaid the premises hereinbefore expressed to be transferred, and that the same are free from incumbrances.

In witness whereof we have hereunto subscribed our name and affixed our seal this ninth day of April, 1898.

[SEAL.] SHEWAN TOMES & CO.,
General Managers the China and Manila S. S. Co., Ld.

Executed by the above-named China and Manila S. S. Co., Ld., in the presence of—

W. A. STOPAM, *Clerk Shewan Tomes & Co.*

A true copy.

ROUNSEVELLE WILDMAN,
U. S. Consul, Hongkong.

[SEAL, U. S. CONSULATE, HONGKONG.]

[Public bill. Triplicate 1. Supplies called for by requisition No. order Sec. Navy, and purchased in open market.]

HONG KONG, *April 11, 1898.*

U. S. Navy Department, per U. S. S. Olympia, —— rate, to Shewan Tomes & Co., Dr.

Bureau: Secretary's office; Appropriation: Special fund, 189–.

Quantity.	Article.	Unit price.	Amount.
	Purchase of steamer Zafiro.....	.....	87,597

Approved,

GEORGE DEWEY,
Commodore, U. S. N., Comd'g Asiatic Station.

U. S. S. ———,
April 11, 1898.

I certify that I have inspected and passed all the above-enumerated articles, both as to quantity and quality, and received the same into my custody.

T. M. Brumby,
Lieut., U. S. N.

I certify that, after public competition, I purchased on the —— day of Apr. 11, 1898, the above-enumerated articles at the prices above charged, amounting in all to 87,597 dollars and ——— cents, and that these prices are reasonable, and were the lowest rates at which the articles could be obtained.

Daniel A. Smith,
Pay Inspector, U. S. N.

The above-enumerated articles were purchased by my order, after public competition in open market, in accordance with Regulations. This bill is therefore approved for 87,597 dollars and ——— cents, and the pay officer of this vessel is hereby ordered to pay the same.

Ch. V. Gridley,
Captain, U. S. N., Commanding.

Received, April 11, 1898, of Daniel A. Smith, pay inspector, U. S. N., the sum of 87,597 dollars and ——— cents, in full of the above bill.

Shewan Tomes & Co.,
General Managers The China & Manila Steamship Co., Ld.

$87,597 (£18,000 stg.).

Bill of sale of a vessel.

Know all men by these presents, that I, Frank Smyth, owner of the S. S. *Nanshan*, of London, for and in consideration of the sum of thirty-two thousand pounds sterling in hand paid at or before the ensealing and delivery of these presents, by George Dewey, of Washington, U. S., the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred, and set over, and by these presents do grant, bargain, sell, assign, transfer, and set over unto the said George Dewey, his executors, administrators, and assigns, the said S. S. *Nanshan*, together with her masts, yards, sails, rigging, anchors, cables, boats, tackle, apparel, and appurtenances as she now lies in the harbor of Hongkong and as she is more particularly described in a certificate of registry granted her at the port of London in the following words:

S. S. *Nanshan*. Official number, 105794. No. 20. Date and port of registry, in 1896, London. Steam screw. Built Grangemouth, 1896, by the Grangemouth Dock Yard Company. Gross tonnage, 2,199.97. Registered tonnage, 1,344.18. Length, 285 feet. Breadth, 39 feet. Depth, 24 feet. Engines, triple expansion.

To have and to hold the said S. S. *Nanshan*, and the appurtenances thereunto belonging, unto the said George Dewey, his executors, administrators, and assigns, to the only proper use and behoof, and as the proper

goods and chattels of the said George Dewey, his executors, administrators, and assigns, from henceforth forever; and I, the said Frank Smyth, for myself and my executors and administrators, do hereby covenant and agree to and with the said George Dewey, his executors, administrators, and assigns, that, at the execution of these presents, I am, as aforesaid, the true and lawful owner of the said S. S. *Nanshan*, of London, with the appurtenances thereunto belonging, and have full right and authority to sell and dispose of the same, and that she is freed from and cleared of all claims, encumbrances, or demands whatsoever.

In witness whereof I have hereunto set my hand and seal, the sixth day of April, A. D. 1898.

FRANK SMYTH. [SEAL.]

Signed, sealed, and delivered in presence of

GODFREY, C. C.,
Master, Solicitor, Hongkong.

CONSULATE OF THE UNITED STATES OF AMERICA,
At Hongkong, Apr. 6, 1898.

I, the undersigned, consul, etc., do hereby certify that Frank Smyth signed and sealed the above bill of sale in my presence and in presence of the witnesses thereto, and acknowledged the same to be his act and deed for the purposes therein mentioned.

ROUNSEVEL WILDMAN,
U. S. Consul.

Public bill. Triplicate 1. Supplies called for by requisition No. order of Sec. Navy, and purchased in open market.]

HONG KONG, *April 6, 1898.*

U. S. Navy Department, per U. S. S. Olympia, —— rate, to V. A. *Caesar Hawkins, Dr.*

Bureau, Secretary's Office; appropriation, special fund, 189

Quantity.	Article.	Unit price.	Amount.
	Purchase of steamer Nan Shan.....	.....	$155,728
		.....	155,728

U. S. S. OLYMPIA, *April 6, 1898.*

I certify that I have inspected and passed all the above-enumerated articles, both as to quantity and quality, and received the same into my custody.

T. M. BRUMBY, *Lieut., U. S. N.*

I certify that, after public competition, I purchased on the —— day of April 6, 1898, the above-enumerated articles at the prices above charged, amounting in all to 155,728 dollars and ——— cents, and that these prices are reasonable, and were the lowest rates at which the articles could be obtained.

———— ————,
Pay Inspector, U. S. N.

The above-enumerated articles were purchased by my order, after public competition in open market, in accordance with regulations. This bill is therefore approved for 155,728 dollars and —— cents, and the pay officer of this vessel is hereby ordered to pay the same.

———— ————,
Captain, U. S. N., Commanding.

Received, April 6, 1898, of Daniel A. Smith, pay inspector, U. S. N., the sum of 155,728 dollars and ——— cents, in full of the above bill.

V. A. CAESAR HAWKINS.

———

[Public bill. Triplicate 1. Supplies called for by requisition No. ——, and purchased in open market.]

HONG KONG, *April 19, 1898.*

U. S. Navy Department, per U. S. S. Olympia, ——— rate, to U. S. consul, Dr.

Bureau, Secretary's Office; appropriation, special, 189

Quantity.	Article.	Unit price.	Amount.
2	Certificates re bill of sale for S. S. Nanshan (foreign built)		$4.00
	Shipping 45 seamen on Nanshan at $2.00 ea		90.00
	Ackgt. of signature re Nanshan		2.00
	Recording bill of sale of do		1.00
2	Certificates re bill of sale for S. S. Zafiro, foreign built, at $2.00 ea		4.00
	Shipping 42 seamen on the Zafiro, at $2.00 ea		84.00
	Recording bill of sale of Zafiro		1.00
			186.00
	Mexican=$0.444.		

Approved.

GEORGE DEWEY,
Commodore, U. S. N., Comd'g Asiatic Station.

U. S. S. OLYMPIA, *April 19, 1898.*

I certify that I have inspected and passed all the above-enumerated articles, both as to quantity and quality, and received the same into my custody.

T. M. BRUMBY,
Lieut., U. S. N., Head of Department.

I certify that, after public competition, I purchased on the —— day of April 19, 1898, the above-enumerated articles at the prices above charged, amounting in all to 186 dollars and ——— cents, and that these prices are reasonable, and were the lowest rates at which the articles could be obtained.

DANIEL A. SMITH,
Pay Inspector, U. S. N.

The above-enumerated articles were purchased, by my order, after public competition in open market, in accordance with regulations. This bill is therefore approved for 186 dollars and ——— cents, and the pay officer of this vessel is hereby ordered to pay the same.

CH. V. GRIDLEY,
Captain, U. S. N., Commanding.

Received, April 19, 1898, of Daniel A. Smith, pay inspector, U. S. N., the sum of one hundred eighty-six dollars and ——— cents, in full of the above bill.

R. WILDMAN, *U. S. Consul.*

NAVY DEPARTMENT,
Washington, March 19, 1901.

SIR: Referring to your letter of the 14th instant (E. C. B.), making inquiry respecting the collier *Nanshan*, and to this Department's partial reply of the 16th, I have the honor to enclose herewith the following papers:

1. Copy of a report, dated March 16, 1901, regarding the status of the *Nanshan*, by the Admiral of the Navy.

2. Report, dated the 18th instant, by the Chief of the Bureau of Navigation, embodying copies of a number of telegraphic reports setting forth the circumstances attending the employment of the *Nanshan* and the *Zafiro*, and a statement giving the views of the Bureau as to the status of those vessels at the time of the engagement in Manila Bay.

In transmitting the foregoing papers this Department does not desire to express an opinion respecting the right to prize money or bounty of civilians employed on board the *Nanshan* on May 1, 1898.

In accordance with your request the copy of the petition in the case of E. F. Stovell *v.* The United States, which accompanied your letter, is returned herewith.

Very respectfully,

J. D. LONG,
Secretary.

The Honorable the ATTORNEY-GENERAL.

[Second endorsement.]

OFFICE OF THE ADMIRAL, *March 16, 1901.*

Respectfully returned to the Secretary of the Navy.

The within-named Edward F. Stovell, who was the master of the collier *Nanshan* when that vessel was purchased, was not at any time, nor were any of his subordinate officers or men, appointed or enlisted in the Navy. They were employed by me to handle the ship, and for their services, on account of the hazardous duty which the ship was to undertake, they were promised and received double the rate of wages which they had theretofore been paid in the merchant service.

From the time the *Nanshan* left Hong Kong until some time after the battle of Manila Bay, the military head of that vessel was Lieutenant Ben W. Hodges, U. S. Navy, whom I had placed on board, with a very small number of enlisted men from the *Olympia*, for all duty of a military character which might be necessary.

The *Nanshan* was supplied with two one-pounder guns, and these were also under the charge of Lieutenant Hodges.

GEORGE DEWEY,
Admiral, U. S. Navy.

DEPARTMENT OF THE NAVY,
BUREAU OF NAVIGATION,
Washington, D. C., March 18, 1901.

[Second endorsement.]

Subject: Attorney-General asks for information, and an expression of the views of the Navy Department upon the claim of Captain Stovell *et al.* to share in bounty for the destruction of Spanish vessels in Manila Bay, P. I., May 1, 1898.

Respectfully returned to the Department.

The Bureau quotes below two telegrams bearing on the subjects referred to by the Judge-Advocate-General:

1. HONG KONG, *February 25, 1901.*

BUNAY, *Washington:*

No contract Dewey *Nanshan Zafiro* on file. Pay Director Smith says no written contract was made. If one existed, copy is attached voucher three twenty-six or seven *Olympia*, fleet account fourth quarter, ninety-eight.

REMEY.

2. NEW YORK, *March 17, 1901.*

Rear Adml. CROWNINSHIELD,
Navy Department, Washington, D. C.:

Two one-pounders were mounted but were not used. I commanded all movements of ship. Stovell had charge of his own men.

B. W. HODGES.

The telegram from Lieutenant-Commander B. W. Hodges is in reply to one sent him on the 16th instant by the Bureau of Navigation, as follows:

WASHINGTON, *March 16, 1901.*

Lieutenant-Commander B. W. HODGES,
Grand Hotel, New York:

What guns, if any, were mounted on board the *Nanshan* May first, 1898? Were same used, or not? Were you or Stovell in command?

CROWNINSHIELD.

Further light is thrown upon the facts of this case by the following cable from Admiral Dewey:

HONG KONG, *April 19, 1898.*

SECRETARY OF THE NAVY, *Washington:*

Zafiro and *Nanshan* have not been commissioned. Have been registered as American steamers. Commissioned officers command each vessel; four men; armed. Original officers and men have been shipped merchant service. Both vessels have been cleared for the Bonin Islands, North Pacific. I believe present status preferable in the event of hostilities. They can obtain supplies and coal in Shanghai for men-of-war.

DEWEY.

The facts in this case are as follows:

The *Nanshan* was purchased by the United States Government. Admiral Dewey placed on board of her a naval officer and four men and mounted two one-pounder guns. The master of the collier remained on board and under him were shipped as merchant seamen a crew. The naval officer exercised control over all the movements of the ship and gave all orders concerning her. The merchant captain was merely his executive officer, being familiar with the crew and with the ship. As the Bureau understands the case, the merchant crew were not to be called upon to take any part in manning the guns. The *Nanshan* never approached the Spanish fleet near enough to enable her guns to be of service. She was in no sense a combatant. The guns were mounted on her as a protection from boat attack possibly, but certainly not for offense.

The Bureau is of the opinion that under the circumstances the merchant crew are not entitled to the bounty under section 4631 of the Revised Statutes for the reason that from Admiral Dewey's cable, and from the status as understood by the Bureau, they were shipped as noncombatants.

A. S. CROWNINSHIELD,
Chief of Bureau.

[Second endorsement.]

DEPARTMENT OF THE NAVY,
BUREAU OF NAVIGATION,
October 29, 1900.

Subject: Call of the Court of Claims for information in the case of engagement at Manila Bay May 1, 1898; naval bounty No. 1.

Respectfully returned to the Department.

The only commissioned officer attached to the U. S. S. *Nanshan* on May 1, 1898, was Ben W. Hodges, whose rank at that time was that of lieutenant, and whose pay, according to the navy pay table in existence at that date, was $2,600 per annum. This officer was regularly attached to the *Oregon*, and was detailed from that vessel to take command of the *Nanshan*.

The following enlisted men, detailed from the *Olympia*, were attached to the *Nanshan* on May 1, 1898:

Roger C. Cotton, ordinary seaman; pay, $19 per month.
Andrew Pederson, coxswain; pay, $33 per month.
C. A. Radley, seaman; pay, $24 per month.
Charles Wilson, seaman; pay, $24 per month.

The *Zafiro* was under the command of Ensign Henry A. Pearson, who was detailed from the *Oregon*. He was the only commissioned officer on board. His rank at that time was that of ensign, and his pay, according to the old navy pay table, was $1,400 per annum.

The following enlisted men, detailed from the *Monocacy*, were attached to the *Zafiro* on May 1, 1898:

Werdenbaugh Ramsey, master-at-arms 3d class; pay, $32 per month.
Alexander A. Kidd, ordinary seaman; pay, $19 per month.
Clinton E. Child, seaman; pay, $25 per month.

William T. Baxter, yeoman 3d class; pay, $30 per month.

The officers and men named herein were borne on the rolls of the vessels from which they were detailed.

A. S. CROWINSHIELD,
Chief of Bureau.

GENERAL ORDER }
No. 409. }

NAVY DEPARTMENT,
Washington, February 25, 1893.

The following Executive order is published for the information and guidance of all persons concerned.

B. F. TRACY,
Secretary of the Navy.

EXECUTIVE MANSION,
Washington, D. C., February 25, 1893.

On and after the 1st day of April, 1893, the pay of the petty officers and other enlisted men of the Navy shall be as follows, but this order shall not reduce the pay or rating of any enlisted man during his present enlistment below the rate or pay at which he was enlisted, or in which he is now serving, unless he shall be reduced in rating as provided by law or regulations:

Rating.	Monthly pay.
Chief masters at arms	$65.00
Chief boatswains' mates	50.00
Chief gunners' mates	50.00
Chief quartermasters	50.00
Master at arms, first class	40.00
Boatswains' mates, first class	40.00
Gunners' mates, first class	40.00
Quartermasters, first class	40.00
Schoolmasters	40.00
Masters at arms, second class	35.00
Boatswains' mates, second class	35.00
Gunners' mates, second class	35.00
Quartermasters, second class	35.00
Masters at arms, third class	30.00
Coxswains (1)	30.00
Gunners' mates, third class	30.00
Quartermasters, third class	30.00
Seamen gunners	26.00
Seamen (2)	24.00
Apprentices, first class	21.00
Ordinary seamen	19.00
Apprentices, second class	15.00
Landsmen (3)	16.00
Apprentices, third class	9.00
Machinists	70.00
Chief carpenters' mates	50.00
Boiler makers	60.00
Coppersmiths	50.00
Blacksmiths	50.00
Carpenters' mates, first class	40.00
Plumbers and fitters	45.00
Water tenders	38.50
Sailmakers' mates	40.00
Oilers	36.00
Carpenters' mates, second class	35.00
Printers	35.00
Painters	30.00
Carpenters' mates, third class	30.00

[Here follow numerous other ratings.]

(1) Coxswains detailed as coxswains of steam launches, or as coxswains to commanders in chief, shall receive five dollars per month in addition to their pay.

(2) Seamen in charge of holds shall receive five dollars per month in addition to their pay.

(3) Landsmen assigned to duty as jacks-of-the-dust or as lamplighters shall receive five dollars per month in addition to their pay.

BENJ. HARRISON.

GENERAL ORDER } NAVY DEPARTMENT,
No. 467. } *Washington, D. C., September 19, 1896.*

The following Executive order is published for the information of all persons concerned.

W. MCADOO,
Acting Secretary.

EXECUTIVE MANSION,
Washington, D. C., September 16, 1896.

On and after October 1, 1896, the pay of yeomen in the Navy shall be as follows, but this order shall not reduce the pay of any enlisted man during his present enlistment below the pay at which he was enlisted, or which he is now receiving:

Chief yeoman	$60.00 per month.
Yeoman, first class	40.00 per month.
Yeoman, second class	35.00 per month.
Yeoman, third class	30.00 per month.

GROVER CLEVELAND.

[Second endorsement.]

DEPARTMENT OF THE NAVY,
BUREAU OF NAVIGATION,
Washington, D. C., March 6, 1901.

Subject: Call of the Court of Claims in the case of "Engagement at Manila Bay, May 1, 1898."—No. 1, Naval Bounty.

Respectfully returned to the Department.

The records of the Bureau in regard to the subjects of this call show as follows:

1. No copies of the contracts for the lease, charter, or purchase of the *Nanshan* or *Zafiro* are on file in the Bureau of Navigation. The Bureau quotes below a copy of a telegram on this subject received from the commander in chief, U. S. naval force, Asiatic Station:

HONGKONG, *February 25, 1901.*

BUNAY, *Washington:*

No contract Dewey *Nanshan Zafiro* on file. Pay Director Smith says no written contract was made. If one existed, copy is attached voucher three twenty-six or seven *Olympia*, fleet account fourth quarter ninety-eight.

REMEY.

2. The following is a list of such officers and men as belonged to the naval service and who were on board the *Nanshan* and *Zafiro* May 1, 1898:

The only commissioned officer attached to the U. S. S. *Nanshan* on May 1, 1898, was Ben W. Hodges, whose rank at that time was that of lieutenant, and whose pay, according to the Navy pay table in existence at that date, was $2,600 per annum. This officer was regularly attached to the *Olympia*, and was detailed from that vessel to take command of the *Nanshan*.

The following enlisted men, detailed from the *Olympia*, were attached to the *Nanshan* on May 1, 1898:

Roger C. Cotton, ordinary seaman. Pay, $19 per month.
Andrew Pederson, coxswain. Pay, $33 per month.
C. A. Radley, seaman. Pay, $24 per month.
Charles Wilson, seaman. Pay, $24 per month.

The *Zafiro* was under the command of Ensign Henry A. Pearson, who was detailed from the *Olympia*. He was the only commissioned officer on board. His rank at that time was that of ensign, and his pay, according to the old Navy pay table, was $1,400 per annum.

The following enlisted men, detailed from the *Monocacy*, were attached to the *Zafiro* on May 1, 1898:

Werdenbaugh Ramsey, master at arms, third class. Pay, $32 per month.
Alexander A. Kidd, ordinary seaman. Pay, $19 per month.
Clinton E. Child, seaman. Pay, $25 per month.
William T. Baxter, yeoman, third class. Pay, $30 per month.

3. The following statement appears in Bureau of Navigation, No. 154963, letter 6633-D., from the commander in chief, U. S. naval force, Asiatic Station (Rear-Admiral George Dewey), under date of November 14, 1898:

"I have the honor to request that the Department will send to this station a sufficient number of officers and men to commission the *Nanshan* and *Zafiro*, which are now manned by the hired aliens who were on board when the vessels were purchased."

4. The quotation in paragraph 3 gives all the information on file in the Bureau of Navigation concerning this question.

5. There is no information in the files of the Bureau to enable it to reply to question 5.

6. There are no copies or originals of papers signed by officers or men of the *Nanshan* or *Zafiro*, or anyone in their behalf relating to their service on file in the Bureau of Navigation.

7. A copy of the rates of pay in the naval service in force May 1, 1898, is appended.

A. S. CROWINSHIELD,
Chief of Bureau.

[Third endorsement.]

NAVY DEPARTMENT,
OFFICE OF THE JUDGE-ADVOCATE-GENERAL,
March 14, 1901.

Subject: Call of Court of Claims in case of "Engagement at Manila Bay, May 1, 1898."—No. 1, Naval Bounty.

Respectfully referred to the Bureau of Supplies and Accounts, inviting attention to the cablegram, dated Feb. 25, 1901, from Rear-Admiral Remey, quoted in the endorsement (second) herewith of the Bureau of Navigation.

It is requested that if a copy of the contract for the charter, etc., of the *Nanshan* and *Zafiro* accompanied the vouchers referred to in said cablegram, a copy of same be furnished the Department.

By direction of the Secretary:

SAM. C. LEMLY,
Judge-Advocate-General.

[Fourth endorsement.]

BUREAU OF SUPPLIES AND ACCOUNTS,
March 15, 1901.

Subject: Call of Court of Claims in case of "Engagement at Manila Bay, May 1, 1898."—No. 1, Naval Bounty.

1. Respectfully returned to the Judge-Advocate-General.

2. The *Nanshan* and *Zafiro* were purchased by Admiral Dewey under instructions from the Department, and not chartered. The bills of sale for these vessels are on file in this office. If any other contract or agreement for the purchase of the vessels was made and attached to vouchers in payment for same they would be on file in the office of the Auditor for the Navy with the receipted vouchers filed by the pay officer of the *Baltimore*, who paid the bills. The Bureau doubts, however, if there was any contract or agreement other than the ordinary bills of sale.

A. S. KENNY,
Paymaster-General, U. S. N.

TREASURY DEPARTMENT,
OFFICE OF AUDITOR FOR THE NAVY DEPARTMENT,
Washington, March 21, 1901.

E. F. STOVELL
vs.
THE UNITED STATES. } No. 3893.

The Honorable the SECRETARY OF THE TREASURY.

SIR: I have by your reference of the 15th instant the letter from the honorable Attorney-General with a copy of the petition in the above-entitled cause, and as directed have the honor to report that the records of this office show that the *Nanshan* and *Zafiro* were purchased at Hong Kong, China, by Admiral George Dewey, U. S. N., in April, 1898. The authority for the purchase of these vessels is not on file in this office.

It appears from the muster rolls of these vessels that the money for the payment of the crews was turned over to the master of each vessel by Pay Inspector D. A. Smith, U. S. N., and that E. A. Stovell, master of the *Nanshan*, and A. M. Whitton, master of the *Zafiro*, receipted to Smith for the money.

There is a certificate attached to the roll of each vessel signed by their respective masters, certifying that they paid each man on the roll the amount set opposite his name. The officers of these vessels were allowed $40 (Mexican) per month for subsistence, and the crews 30 cents per day. The money was turned over to the masters of the vessels, who receipted to Pay Inspector Smith, U. S. N. The masters certify that they paid the amount set opposite each man's name. This office has no record of the appointment of Stovell and Whitton to any position in the naval service prior to or subsequent to the battle of Manila, nor of the enlistment of the crew of these vessels. What agreements were made with the master and crews of these vessels are not disclosed in any of the papers relating to their purchase by the United States. Whether these vessels were within signal distance of the vessels engaged under such circumstances and in such condition as to be able to render effective aid, if required, in the action at Manila Bay, this office has not been informed.

In the case of the crew of the *St. Louis* the Navy Department informed this office that—

"Men serving on board the *St. Louis* were not enlisted in the naval service, but were furnished the Government under the provisions of the contract with the International Steamship Company when the *St. Louis* was chartered by the Navy Department."

In the case of the United States *vs.* the brig *S. S. Twickenham*, decided by the district court of the United States in the fifth judicial circuit for the southern district of Florida, it was said:

"It being suggested by the Navy Department that at the time of the capture of said *S. S. Twickenham* by the U. S. S. *St. Louis*, said *St. Louis* was a vessel under charter and manned by her regular officers and crews employed and paid by the International Navigation Company. It is ordered that the decree of distribution hereinbefore pronounced be amended by adding thereto the words 'and said amount shall be distributed among all persons borne upon the books and doing duty on board said ship *St. Louis*, as shown by the list of June 10, 1898, signed by C. F. Goodrich, captain, U. S. N., commanding, according to the laws for the distribution of prize money.'"

In view of the decree in the case of the *St. Louis* and the decision of the United States Supreme Court in the case of the U. S. *v.* Steever (113 U. S., 753), and not being informed whether the *Nanshan* and *Zafiro* were "armed" vessels, this office is unable to express an opinion as to the right of the crews to participate in the distribution of the naval bounty accruing from the destruction of the Spanish fleet at Manila.

Respectfully,

W. W. Brown,
Auditor.

The deposition of Ben W. Hodges, for claimant, Edwin F. Stovell, taken at Washington, D. C., on the 5th day of March, 1901.

Claimant's counsel, Charles W. Clagett; counsel for officers and men of the Navy, Benjamin Micou.

Ben W. Hodges, having been produced as a witness on behalf of the claimant, was by me sworn, before any question was put to him, to tell the truth, the whole truth, and nothing but the truth relative to the said cause, and thereupon deposed and said that his name was Ben W. Hodges; that his occupation is that of lieutenant-commander, U. S. N.; that he is 44 years of age; that his place of residence is Memphis, Tenn.; that he is one of the officers entitled to a distribution of the bounty money awarded for the battle of Manila Bay.

And thereupon the said Ben W. Hodges was examined by the counsel for the claimant, and in answer to interrogatories testified as follows:

By Mr. CLAGETT:

1. Question. Please state when you were ordered to the ship *Nanshan*?

Answer. I reached Hongkong on the night of April 10, 1898, and reported to Commodore Dewey on the *Olympia* on the morning of the 11th—the next morning. He ordered me to go on board the *Nanshan* and to take with me four enlisted men. He told me that later on he would fit the *Nanshan* out with guns from the other ships of the fleet. He told me that the *Nanshan* was a ship that he had just bought and that she was loaded with the best quality of Welsh coal, and that she had 3,000 tons on board. He said that he had offered the officers and men of the ship double pay to stay on board of her. My duties were to take general charge of the ship and to obey all orders that either he gave me direct or through the flag lieutenant, and to execute all the movements that were ordered from the flagship, and, in general, to control the movements and actions of the *Nanshan*, but not to interfere with the internal discipline, and such things as loading and discharging cargo, but to leave those matters in the hands of Captain Stovell, who was the captain of the ship before she was bought and accepted by Admiral Dewey.

2. Question. The Captain Stovell you refer to is Capt. Edward F. Stovell, is he not?

Answer. Yes, sir.

3. Question. Will you state what part the *Nanshan* took in the battle of Manila Bay?

Answer. The *Nanshan* crossed the China Sea with the fleet. It was an integral part of the fleet, as much so as any other ship. She kept her position in the fleet all the way across, and after Admiral Dewey stopped the fleet at Subig Bay and ordered the commanding officer to come on board the flagship for his final instructions, I went over and received his orders for entering Manila Bay, and then returned to the *Nanshan*, and the fleet started in single column, the *Olympia* leading, followed by the *Baltimore*, the *Raleigh*, the *Petrel*, the *Concord*, the *Boston*, the *McCullough*, the *Nanshan*, and the *Zafiro*. It was a regular fleet formation, and it was in this order that we passed the forts. The forts on the south side of the channel fired at the ships of the fleet as they were

going into Manila Bay, and the *Nanshan* and the *Zafiro* passed through the whole zone of fire. After passing the forts, the third division, of which the *Nanshan* was one, came up on the left flank of the other ships and steamed up in that order until we saw the lights of the city of Manila ahead. The order was then given by the flagship to stop. The whole fleet stopped without anchoring and lay still until early daylight. At daylight the Spanish forts at Manila and at Sangley Point opened fire on the fleet, and as soon as the land and the surroundings could be made out clearly the Admiral made signal for the first and second divisions to follow the flagship. This left the *McCollough*, *Nanshan*, and *Zafiro*, which comprised the third division, in reserve, while the first and second divisions steamed up and brought on the action with the Spanish fleet. These three ships stayed in reserve during the time of the action, within easy signal and supporting distance, and the *Nanshan* all that time was ready to join in battle in case she was ordered to do so or to render assistance to any of her ships. The flagship at 7.30 in the morning made signal to withdraw from action. They steamed out close to where we were lying and signaled for the third division to take position as before. At 11.30 the first and second divisions steamed into Sangley Point and renewed the action with the batteries on shore and such of the Spanish ships as were still in condition to fight, and again the *Nanshan* lay ready to obey any signal which might have been given. It was about 1 p. m. when the Spaniards hoisted the white flag at the naval station of Cavite and the Admiral then made signal to anchor at discretion. The flagship steamed up to the city of Manila and I gave orders for the *Nanshan* to steam up, and we went past the flagship and I anchored closer to the city than she was.

4. Question. How was the *Nanshan* armed and what provisions did she make for rendering assistance if called upon?

Answer. The *Nanshan* had two long 1-pounders which were taken from the flagship *Olympia* and 360 rounds of ammunition for these two guns. She also had 11 Lee rifles, which were sent on board from the *Raleigh*, and 11 revolvers, with a suitable amount of ammunition. We rigged out two boats ready to lower and pick up men in the water if it was necessary to do so. She was not so well adapted for towing as the *McCullough* and *Zafiro*, as they were smaller vessels and could turn around and maneuver in very short space, while the *Nanshan* was a heavy ship and was loaded down to the underwriter's mark with coal.

5. Question. Was Capt. Edward F. Stovell on board all the time?

Answer. He was.

6. Question. And also his crew which he brought with him from Hongkong?

Answer. Yes, sir.

7. Question. I understood you to say that as far as the internal management of the ship was concerned, that was exclusively in charge of Captain Stovell; am I correct in that?

Answer. Yes, except as related to the signaling and handling of the guns, which I kept in my own charge.

Cross-examination by Mr. MICOU:

1. Cross-question. Was the *Nanshan* a vessel of our Navy?

Answer. She had belonged to the firm of Bradley & Co. It was a British firm doing business in Hongkong.

2. Cross-question. How did the Navy get her?

Answer. She was bought by Commodore George Dewey. She was registered at the consulate, "The property of George Dewey, Washington, D. C.," and was treated as a merchant ship at first. The colors were not hoisted, but she had clearance, and this clearance was renewed every third day, as if she had been an actual merchant ship.

3. Cross-question. How often?

Answer. Every third day.

4. Cross-question. Explain what you mean by clearance every third day.

Answer. Permission from the port authorities for the ship to put to sea, and it gives the name of the ship, the nationality, and the port for which she is bound.

5. Cross-question. That was done while you were at Hongkong?

Answer. Yes, sir.

6. Cross-question. How long were you at Hongkong after the purchase of this ship before the ship put to sea?

Answer. I joined her on the 11th of April, but she was bought before that, just how long I do not know, but I think about ten days or two weeks. I am not certain about the date of the purchase.

7. Cross-question. On what day did you leave Hongkong?

Answer. I left on Sunday, the 24th of April.

8. Cross-question. You say that the *Nanshan* was loaded down with coal. What was the primary use of the *Nanshan?*

Answer. The primary use was to take along this extra supply of coal. The commodore knew that in case war was declared he would not be allowed coal again for a year in Hongkong, and he was so far away from home that he could not depend upon getting any coal from there.

9. Cross-question. She was purchased, then, as a coal ship?

Answer. Yes, sir.

10. Cross-question. And to accompany the fleet?

Answer. Yes, sir.

11. Cross question. When were these two 1-pounder guns put on the ship?

Answer. They were put on about the 20th of April, and Admiral Dewey gave me orders not to mount them in the harbor of Hongkong, for fear that it would alarm some of the crew and cause them to desert.

12. Cross-question. These Lee rifles that you speak of, are they guns for use aboard ship that you mount or are they infantry guns?

Answer. Just the infantry gun. A very small magazine rifle, 0.236-inch caliber. It is the smallest rifle used by any force in the world.

13. Cross-question. Are they such rifles as are used by our marines or sailors aboard ship?

Answer. Yes; exactly the same.

14. Cross-question. Was Captain Stovell an American?

Answer. He was a British subject. He was a seafaring man and had been at sea all his life.

15. Cross-question. He was in command of this ship when she was bought, was he not?

Answer. Yes; he commanded her when she belonged to Bradley & Co.

16. Cross-question. And his crew were retained?

Answer. Yes, sir.

17. Cross-question. Now, you say he had charge aboard that ship except as to signaling and handling the guns. Did you have charge of those things?

Answer. Yes; and as the representative of the Admiral I could, in case of necessity or when I wanted to, give him any order and he would have to obey it as coming from the Admiral.

18. Cross-question. Then his duty and the duty of his crew was to operate that ship under the control of the Admiral and under your control as the representative aboard?

Answer. Yes, sir.

19. Cross-question. That was the status?

Answer. That was the status.

20. Cross-question. Did Captain Stovell or any of the crew that were with him have any rate of pay in the naval service of the United States?

Answer. No; their rate of pay was just fixed by doubling what they had received from Bradley & Co.

21. Cross-question. It was not according to any naval rating whatever?

Answer. None whatever.

22. Cross-question. That vessel was under the control of the Navy Department, was she not?

Answer. Yes, sir; absolutely.

23. Cross-question. She was not operating in an independent way at all, was she?

Answer. No; she was an integral part of the fleet.

24. Cross-question. Do you know what this rate of pay was?

Answer. No. My impression is that the captain's pay as doubled amounted to about $2,500 in United States money.

25. Cross-question. Did the *Nanshan* actually fire any during the engagement?

Answer. No, not once. We were not at any time within effective range of the guns that she carried and we were not directly attacked, except that the forts may have fired on us. It was impossible to tell at night exactly what ships they were firing at and where their shells struck.

26. Cross-question. Wasn't she stationed in the arrangement for the battle more in reference to her being available to furnish coal to the other ships than to take any part in the engagement?

Answer. She was not expected to furnish any coal during the action; that would have been out of the question.

27. Cross-question. But she was where that coal could be protected by the other ships, was she not?

Answer. Yes. The *Raleigh*, I think, was detailed as a special guard in case the reserve division was attacked separately by the enemy. The *Raleigh* had orders to go to their assistance——

28. Cross-question. As a special guard of what?

Answer. Of the reserve division.

29. Cross-question. What did it consist of?

Answer. The *McCullough*, the *Zafiro*, and the *Nanshan*.

30. Cross-question. What was the *Zafiro?*

Answer. The *Zafiro* was a passenger steamer which had been plying between Hongkong and Manila and was bought by Admiral Dewey at the same time that the *Nanshan* was bought.

31. Cross-question. What was she used for?

Answer. For provisions and supplying coal. I think she had 1,000 tons of coal on board.

32. Cross-question. She was a supply ship?

Answer. Yes; and afterwards used as a dispatch ship. She was a quick and handy little vessel.

33. Cross-question. Was the *McCollough* used for carrying supplies at all?

Answer. No; she was not adapted for it.

34. Cross-question. Was she used for a fighting ship, or what?

Answer. She was used for a fighting ship or dispatch boat. She did not have a good battery on board. It had been the intention to give her quite a strong battery, but she left the Atlantic coast without having gotten it on board, and she was not well armed when she went across.

35. Cross-question. You say that Captain Stovell had no rate of pay in the service. Was he the commander of that vessel in the sense that regular naval officers are commanders of navy vessels, regularly on the naval list that they are assigned to?

Answer. Not completely, because in the Navy the commanding officer would have charge of the signals and the fighting of the ship.

36. Cross-question. The signals and the fighting of the ship, are they not really the military operations of the ship?

Answer. Yes, sir.

37. Cross-question. And you had charge of that and not Captain Stovell?

Answer. Yes, sir.

Redirect examination by Mr. CLAGETT:

1. Redirect question. Do you know what this vessel was purchased for?

Answer. She was purchased for the United States Navy Department out of the $50,000,000 war fund.

2. Redirect question. Do you know how long Captain Stovell and the crew remained in the service of the United States?

Answer. I think they are still in the service of the United States. My impression is that he is still on the *Nanshan*.

3. Redirect question. When is the last time you know, of your own knowledge, on that point?

Answer. Of my own knowledge he was in command in February, 1899; that is the last time I saw him.

4. Redirect question. Did your orders from Admiral Dewey intend that you should allow Captain Stovell, in all ordinary matters, a free command in the internal management of the ship?

Answer. Yes.

5. Redirect question. I would like to know whether or not the *Nanshan* during the battle was within range of the guns of the Spanish fleet?

Answer. Yes; she was within range, but while the battle was going on they were too busy with the other ships to fire at us. They did not do it. We were within range from Sangley Point and Manila and from the Spanish fleet.

6. Redirect question. Mr. Micou asked you just now whether the *Nanshan* was taken into the bay for the purpose of serving as a coal

ship. I would like you to state the purpose for which the *Nanshan* was taken into the bay and if she was only to be used as a coaling ship would it have been necessary to carry her within the bay?

Answer. Yes; Admiral Dewey was extremely rigid about keeping the fleet together. His orders were simply ironclad about that. With the guns she had on board, in case she had been separated by weather or any circumstance that we could not control from the rest of the fleet, she could have stood off a boat attack, or sink a torpedo boat, or whip quite a number of the little Spanish gunboats which we knew the Spanish had there. They were known to have fourteen or fifteen Spanish boats scattered around the islands and, in my opinion, she could have whipped anything such as the *Callao* and the *Urdaneta*. There were about fourteen of them altogether.

7. Redirect question. Then, as I understand, the *Nanshan* was taken within the bay for the purpose of serving, if necessity required, as a fighting ship?

Answer. If necessity had arisen I have not the slightest doubt that Admiral Dewey would have ordered her to take part in the fighting. He called attention himself several times to the fact that she had a good ram bow. I never doubted that it was his intention that if he had to use her that he would have done so.

Recross-examination by Mr. MICOU:

1. Recross-question. How far was the portion of the bay in which this engagement took place from the open sea?

Answer. In the neighborhood of 22 or 23 miles.

2. Recross-question. What channels were there for entering that bay?

Answer. There were just two channels. The Boca Chica and the Boca Grande.

3. Recross-question. Were they defended by batteries?

Answer. They were.

4. Recross-question. If the *Nanshan* had been left outside would there have been any way for the fleet after it went in to have gotten at this coal except to come back by those land batteries?

Answer. It would have required either the fleet to come out or the *Nanshan* to run the batteries.

5. Recross-question. You say the *Nanshan* is still the property of the Navy Department. Do you know anything of the use it is put to now; how it is classed?

Answer. I think she is a collier.

6. Recross-question. She is not classed as a war vessel?

Answer. No; they have taken the guns off.

By Mr. CLAGETT:

Question. How was the fleet supplied with coal when it reached Manila?

Answer. They filled the bunkers full in Hongkong, and after winning the battle of May 1 we captured about 9,000 tons of coal. The *Nanshan's* cargo was not touched for months.

Question. The fleet was supplied with sufficient coal to come out of Manila Bay and to go to another port?

Answer. Yes; they could have steamed back to Hongkong easily.

General interrogatory. The examination by counsel being concluded, the witness, in compliance with the rule of court requiring him to state whether he knows of any other matter relative to the claim in question, and if he does to state it, says: After the battle of May 1, the *Nanshan* lay in company with the rest of the ships of the fleet at Cavite and was subject to attack, and was just as liable to be attacked by night or by day by torpedo boats or by the enemy's guns as any other vessel in the fleet. She lay there from May 1 till the 13th of August, when the city of Manila surrendered.

B. W. HODGES.

I, F. Walter Brandenburg, a commissioner of the Court of Claims, do hereby certify that the foregoing deposition was taken down by me in shorthand at the time and place mentioned in the caption thereof from the oral statement of said witness; that the said witness before being examined was by me first duly sworn, according to law, to tell the truth, the whole truth, and nothing but the truth relative to the said cause.

I further certify that I am not of counsel nor otherwise interested in the result of said suit.

F. WALTER BRANDENBURG,
Commissioner of the Court of Claims.

Deposition of Asa Walker, for the officers and men of the Navy, taken at Washington, D. C., on the 10th day of April, 1901.

Counsel for claimant, Edwin F. Stovell, Charles W. Clagett; counsel for officers and men of the Navy, William E. Harvey.

ASA WALKER, being duly sworn, deposes as follows:

First general interrogatory by the commissioner. State your name, your age, your occupation, and your place of residence; whether you have any, and if any, what interest, direct or indirect, in the claim which is the subject of inquiry, and whether and in what degree you are related to the claimant.

Answer. My name is Asa Walker; I am 55 years old; a naval officer, and am residing now in Washington. I am a captain in the Navy. I have an interest in the claim as one of the claimants.

Being interrogated by WILLIAM E. HARVEY, Esq., the witness says:

1. Question. When and where did you enter the naval service of the United States Government?

Answer. I entered the naval service of the United States in Newport, R. I., the 21st of November, 1862.

2. Question. Are you a graduate of the Naval Academy?

Answer. I am.

3. Question. Has your service in the Navy been continuous?

Answer. It has.

4. Question. Where were you on the 1st day of May, 1898?

Answer. In Manila Bay, in command of the United States gunboat *Concord.*

5. Question. Did you see the steamer *Nanshan* in Manila Bay on that morning?

Answer. I did.

6. Question. How far was she from the Spanish vessels that were engaged?

Answer. Between 4 and 5 miles, I should think.

7. Question. Did she at any time before the termination of the action approach nearer than that?

Answer. Not to my knowledge.

8. Question. Had she done so would you probably have known it?

Answer. I might and I might not. If she had come near me I should have known it. I was otherwise engaged just then.

9. Question. What was the character of the *Nanshan?*

Answer. She was a collier, loaded with a supply of coal for the fleet, purchased in Hongkong. A full cargo, I think, she had; some three thousand odd tons.

10. Question. Please state whether, in your opinion as as expert, the *Nanshan*, situated as she was on the 1st day of May, 1898, and assuming that she was armed with two 1-pounders, was within signal distance of the vessels causing the destruction of the Spanish fleet, under such circumstances and in such condition as to be able to render effective aid if required, and give your reasons for your opinion.

(Question objected to on the ground that the case is not one in which expert opinion is admissible, the facts all being before the court, and on the further ground that the witness has not qualified as an expert for a question of this kind.)

Answer. She certainly was within signal distance of the fleet that effected the destruction. I do not think she could have afforded effective aid because of the distance at which the action was fought from the opposing vessels, varying between 4,000 and 2,500 yards. Her guns, being 1-pounders, would have been able to produce little or no effect at such a range. I think that is all.

11. Question. Was there any reason why she could not have approached nearer to the Spanish vessels?

Answer. None, except that she was ordered—the orders were by signal for the *Nanshan*, *Zafiro*, and *McCullough* to lay off in the bay clear of the fleet, and had any of them approached they would have been liable to be struck by the shots of the enemy.

12. Question. What was the depth of the water in which the Spanish vessels were moored?

Answer. The Spanish vessels were inside of Sangley Point, or in the prolongation of Sangley Point, in water varying from 12 to 24 feet as dispersed. There were some of them in greater depth than others.

13. Question. How much water did the *Nanshan* draw on that day?

Answer. I am unable to state accurately as to that. She was down to load-water line, but I can not tell what her draft was; it might have been 20 feet. That I can not state accurately.

14. Question. Assuming that the *Nanshan* could have been brought within range of her guns, what, if any, damage could she have inflicted on the Spanish vessels?

Answer. I don't think she could have inflicted much, if any, even at the closest range.

Being cross-examined by CHARLES W. CLAGETT, Esq., the witness says:

15. Question. Captain Walker, how long did Lieutenant Hodges remain in command of the *Nanshan?*

Answer. I don't know how long it was. His evidence in connection with the claim for stores and supplies captured gives it exactly. He tells the whole history there.

16. Question. Did he remain in command of that vessel for a month after the battle?

Answer. I think he remained on her for several months, all the time that he was doing duty at the Cavite Navy-Yard. I think he lived on board there all the time. His deposition will give the exact date of his leaving her and of going on duty at the Cavite Arsenal.

(Objection is made to this cross-examination because it is not responsive to the direct examination.)

17. Question. How did the fleet enter Manila Bay—what position in the order of entrance did the *Nanshan* have?

Answer. The *Nanshan*, *McCulloch*, and *Zafiro* followed on the port quarter of the fleet entering the harbor, to the best of my recollection.

18. Question. Were the *Nanshan*, *Zafiro*, and *McCulloch* constituting a part or division of that fleet? And if so, please state what.

Answer. I don't think that they could have been possibly called a division of the fleet. As our vessels were going out from Hongkong and during the passage they were on the right flank of the fleet, the war vessels being in column, and these three in column by themselves directly under the charge and responsive to signals from the commander in chief.

19. Question. How far, in your opinion, was the *Nanshan* from any of the American vessels engaged in the fight?

Answer. I should say that she must have been 2½ to 3 miles, perhaps 3 to 4 miles.

20. Question. Were you encouraged to keep a lookout upon the *Nanshan* during this battle?

Answer. I have just said that I do not know where she was during the engagement, and stated where she was when we took position.

21. Question. Then did you see the *Nanshan* after the battle commenced?

Answer. I don't recollect having seen her at all after we engaged the ships.

22. Question. Do you know whether or not the *Nanshan* had a bow which would have been suitable for ramming, if required?

Answer. She had the usual collier's straight bow. If she should strike any unprotected vessel while moving with any speed she would probably knock a hole in her, for two vessels of ordinary construction colliding are very apt to do damage to each other.

23. Question. Do you know whether the *Nanshan*, *Zafiro*, and *McCulloch* were within range of the Spanish fleet?

Answer. I can not say.

24. Question. Captain, would a boat armed with 1-pounders be capable of capturing a torpedo boat or an unarmored gunboat?

Answer. It is possible that with 1-pounders a torpedo boat could be injured seriously, but certainly no gunboat could be captured with such an armament.

25. Question. Do you know what preparations the *Nanshan* made for the picking up of men who might be lost overboard from the regular fleet?

Answer. I do not.

26. Question. Do you know what preparations she made to take part in the battle provided the Admiral should signal her to do so?

Answer. I do not.

27. Question. Provided the Admiral had deemed it advisable, could the *Nanshan* have come in as close or closer than the American fleet was during the engagement?

Answer. It would have been possible for her to have come in to the fleet line; hardly further than that, as the flagship at times had but a few inches of water under her keel, and the *Nanshan*, in my opinion, must have drawn quite as much water as the flagship.

Redirect examination by WILLIAM E. HARVEY, Esq.:

28. Question. In your judgment, could the *Nanshan* have been brought over within range of the Spanish vessels?

Answer. Not within effective range.

29. Question. Why?

Answer. Her guns were too light.

30. Question. What is the range of 1-pounders?

Answer. The ultimate range of 1-pounders, depending upon their character, varies from about 3,000 yards to 4,000 yards, extreme range. At a distance of 2,500 yards the shot would have very little penetrative effect of the long 1-pounders and practically nil in the case of the short 1-pounders.

31. Question. What sort of a projectile do 1-pounders have?

Answer. Elongated steel bullet, either iron or steel.

32. Question. Is it an explosive shell?

Answer. Yes; explosive.

33. Question. How much of an explosive charge does the 1-pounder shell carry?

Answer. I don't know the quantity—enough to break it into small pieces. I don't know the weight of the charge. I don't think that at the distance of 2,500 yards the 1-pounder would be capable of penetrating the side of an ordinary ship.

34. Question. By that, do you mean an ordinary war ship?

Answer. I mean an ordinary war ship—that is, 10 to 15 pound plates, which would mean from one-quarter to three-eighths inch thickness.

35. Question. You refer to armored or unarmored vessels?

Answer. That covers all the metal or the plates of the ship. I refer to an unarmored vessel.

Recross-examination by CHARLES W. CLAGETT, Esq.:

36. Question. Captain, how do you know the *Nanshan* could not have gone in closer than 2,500 yards, or the distance that you said that she could go?

Answer. The fleet was from 2,500 to 4,000 yards off. I gave my reason, as we were near the flagship and she had only 6 inches of water under her keel, and the *Nanshan*, in my opinion, drew quite as much water as the flagship.

37. Question. How much water did the flagship draw?

Answer. I think it was 21 or 22 feet.

38. Question. Was the same depth of water all over that portion of the bay you traversed?

Answer. Not at all.

39. Question. Would it not have been possible for the *Nanshan* to have taken a different course and gone in closer?

Answer. Closer than the fleet did?

40. Question. Could she not have picked out her course and gone in closer than the fleet?

Answer. The *Nanshan* could have gone into Canacoa Bay, right in where the Spanish fleet was; she could have gone right in to where the *Castilio* and *Christina* were lying. But off the point, where the flagship had this 6 inches of water under her keel, is where we were nearest to the fleet, and that was about 2,500 yards off from the fleet. Certainly, as they were in the Canacoa Bay, she could have gone right in among them. I don't think she would have contributed much to the interest of the action, however, if she had gone in there.

41. Question. Now, Captain, as to shells. If a shell of a 1-pounder should just reach a ship and hit upon the deck, would it explode?

Answer. Probably. In connection with my answer to the question with reference to the flagship—the amount of water she would draw—I would say she must have drawn more than 22 feet. I am not certain as to that.

Redirect examination by WILLIAM E. HARVEY, Esq.:

42. Question. What, if any, practical difficulties lay in the way of the *Nanshan* approaching the Spanish fleet by way of Canacoa Bay?

Answer. The guns on the Spanish fleet.

43. Question. What was the range of the Spanish guns?

Answer. I should say that some of the guns ranged as high as 4 miles to 5 miles—all the way between 4 and 5 miles and down. There were but few of the larger guns but what would shoot 3½ miles, at least.

44. Question. What, in your judgment, would have been the effect of the fire of the Spanish fleet upon the *Nanshan* during the time between the moment when she came within range of the Spanish guns and the time when she would have been able to have used her own guns effectively?

Answer. She would have been in very serious jeopardy all that time if the Spanish made good shots, and she could not have hit the Spanish at any time worth crediting.

Second general interrogatory by the Commissioner. Do you know of any other matter relative to the claim in question? If you do, state it.

Answer. I do not.

ASA WALKER.

Sworn to and subscribed before me this 11th day of April, 1901.

MARTHA M. BECK,
Commissioner of the Court of Claims.

O

Office Supreme Court, U.S.
FILED
APR 24 1902
JAMES H. McKENNEY,
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1901.

THE UNITED STATES, APPELLANT,
v.
WILLIAM T. SAMPSON, REAR-ADMIRAL, U. S. NAVY, etc. } No. 273

THE UNITED STATES, APPELLANT,
v.
GEORGE DEWEY, ADMIRAL U. S. NAVY, ETC., and Edwin F. Stovell, captain, etc., intervenor. } No. 309

GEORGE DEWEY, ADMIRAL U. S. NAVY, ETC.,
v.
THE "DON JUAN DE AUSTRIA," "ISLA DE CUBA," "Isla de Luzon," etc., and Edwin F. Stovell, captain, etc., intervenor. } No. 310

EDWIN F. STOVELL, CAPTAIN, ETC., INTERVENOR, appellant,
v.
GEORGE DEWEY, ADMIRAL U. S. NAVY, ETC., and the "Don Juan de Austria," "Isla de Cuba," "Isla de Luzon," etc. } No. 311

APPEALS FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

MOTION TO ADVANCE.

In the Supreme Court of the United States.

OCTOBER TERM, 1901.

THE UNITED STATES, APPELLANT, *v.* WILLIAM T. SAMPSON, REAR-ADMIRAL, U. S. Navy, etc.	No. 597.
THE UNITED STATES, APPELLANT, *v.* GEORGE DEWEY, ADMIRAL U. S. NAVY, ETC., and Edwin F. Stovell, captain, etc., intervenor.	No. 654.
GEORGE DEWEY, ADMIRAL U. S. NAVY, ETC., *v.* THE "DON JUAN DE AUSTRIA," "ISLA DE Cuba," "Isla de Luzon," etc., and Edwin F. Stovell, captain, etc., intervenor.	No. 655.
EDWIN F. STOVELL, CAPTAIN, ETC., INTERvenor, appellant, *v.* GEORGE DEWEY, ADMIRAL U. S. NAVY, ETC., and the "Don Juan de Austria," "Isla de Cuba," "Isla de Luzon," etc.	No. 656.

APPEALS FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

MOTION TO ADVANCE.

Now comes the Solicitor-General, in behalf of the United States, with the concurrence of all the counsel representing the various parties to the above-entitled

causes, and moves the court to advance these causes upon the docket, and to set them down to be heard together at as early a date as may suit the convenience of the court, for the following reasons:

(1) The above appeals have been taken from decrees of the supreme court of the District of Columbia, holding a special term as a district court of the United States, entered July 31, 1901, and November 5, 1901, respectively, in the respective prize causes of *William T. Sampson, rear-admiral, U. S. Navy, etc.*, v. *The Spanish vessel of war "Infanta Maria Teresa," etc.*, and of *George Dewey, Admiral U. S. Navy, etc.*, v. *The Spanish vessel of war "Don Juan de Austria," etc.* The questions of law involved in the appeals of the *United States* v. *Sampson*, No. 597, and *The United States* v. *Dewey*, No. 654, are practically the same, while the case of *Dewey* v. *The "Don Juan de Austria," etc.*, No. 655, is practically a cross appeal, relating to certain other legal questions not involved in the Sampson case. The case of *Edwin F. Stovell, intervenor*, v. *George Dewey, etc.*, No. 656, concerns the right of certain parties to share in the fund to be distributed.

(2) All these appeals relate to property alleged to have been captured at the battles of Manila Bay and off Santiago nearly four years ago. The delay in reaching this court has been inevitable, owing to the character of the causes and the amount of evidence which had to be procured, but it has been none the less a hardship to the officers and men concerned to have their claims for prize money remain so long un-

settled. This is especially true in the Dewey case, where it is conceded that a portion of the prize money claimed should in any event be recovered.

(3) Owing to the fact that the term of service of enlisted men in the Navy is comparatively short, and that those who leave the service rarely remain in any one place, but make voyages all over the world in pursuance of their calling, it is difficult for the Navy Department to keep track of them, so that delay in the adjustment of claims for prize money increases the work of the Department, and sometimes even makes it impossible to find the men to whom prize money is due, or their representatives in case of their death.

(4) The amount involved herein is between $1,500,000 and $2,000,000, and those directly interested in its distribution number between 3,000 and 4,000 persons.

(5) The cases are of general public interest.

JOHN K. RICHARDS,
Solicitor-General.

O

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

THE UNITED STATES, APPELLANT,
v.
GEORGE DEWEY, ADMIRAL U. S. NAVY, ETC. } No. 309.

GEORGE DEWEY, ADMIRAL U. S. NAVY, appellant,
v.
THE "DON JUAN DE AUSTRIA" ET AL. } No. 310.

EDWIN F. STOVELL, ON BEHALF OF HIMSELF and officers and crew of the U. S. S. "Nanshan," appellant,
v.
GEORGE DEWEY, ADMIRAL U. S. NAVY, ETC. } No. 311.

APPEALS FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

BRIEF FOR THE UNITED STATES.

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STATEMENT OF THE CASE.

These appeals were taken from a decree of the supreme court of the District of Columbia, sitting as a district court of the United States, in admiralty, in a suit in prize brought by George Dewey, Admiral, U. S. Navy, in behalf of himself and the officers and crew of the naval force on the Asiatic Station, taking part in the battle of Manila Bay.

On May 1, 1898, the libellant, being then a commodore in the United States Navy, with the fleet under his command, engaged a Spanish fleet consisting of the *Reina Cristina*, *Castilla*, *Don Juan de Austria*, *Don Antonio de Ulloa*, *General Lezo*, *Marques del Duero*, *Argos*, *Velasco*, *Isla de Mindanao*, *Isla de Cuba*, *Isla de Luzon*, *Manila*, and two torpedo boats. At the close of the battle the *Manila* alone remained afloat. She was captured, as were also some smaller vessels, both

public and private, a few of which were captured at that time and others subsequently. (Appx.,[a] 126–130.)

In a number of official reports, written at various dates after the battle, the libellant referred to the *Don Juan de Austria*, *Isla de Cuba*, and *Isla de Luzon* as "destroyed" or "burnt." (Appx., 68, 69, 71, 81, 127.) All the captured vessels which remained afloat were appraised (Rec., 122–123), and they were also appropriated to the use of the United States, except one or more private vessels, which were restored to their owners. On May 3, 1898, the libellant took possession of the Cavite Arsenal, containing a large quantity of naval stores and supplies and some boats. About the same time he also took possession of certain land batteries. (Appx., 127.) Some of the property taken at the arsenal, besides that taken from the sunken vessels, was included in the appraisement above mentioned. (Rec., 113–125.)

The protocol between the United States and Spain, signed August 12, 1898, provided as follows:

> The United States will occupy and hold the city, bay, and harbor of Manila pending the conclusion of a treaty of peace, which shall determine the control, disposition, and government of the Philippines. * * * Upon the conclusion and signing of this protocol hostilities between the two countries shall be suspended.

In September, 1898, the Navy Department contracted with the Hongkong and Whampoa Dock Company to raise and reconstruct the *Don Juan de Austria*, *Isla de*

[a] For brevity the Appendix to the Report of the Chief of the Bureau of Navigation for 1898, which is by agreement a part of the record in this case, will be cited in this brief as "Appx."

Cuba, and *Isla de Luzon*, which had been sunk by the Spaniards in shallow water, by opening their sea valves, and had been afterwards set on fire by the libellant. All of them that was out of water had been so seriously injured by fire as to require complete reconstruction. The work of raising these vessels was begun on October 29, 1898, and finished on November 24. They were then overhauled sufficiently to enable them to proceed to Hongkong (the two *Islas* arriving in a semi-sinking condition), where they were reconstructed and refitted for use in the United States Navy, being completed toward the close of 1899. (Rec., 131–142; Appx., 81.)

At least two of the other sunken vessels, the *Ulloa* and the *Velasco*, could probably have been raised to advantage, as they were not burned, but no attempt was ever made to raise any of them, though a small amount of property was taken from them for Government use. They were all advertised for sale in September, 1898, but no bids were received, owing to the unsettled political conditions. (Rec., 62, 142.) Subsequently, in a suit brought by this libellant in the Court of Claims, it was adjudged that they were all "sunk or otherwise destroyed," within the meaning of section 4635 (Rev. Stats.), and bounty was awarded accordingly. (*Dewey* v. *United States*, 178 U. S., 510.)

Shortly after the battle the libellant took possession, for Government use, of certain nonseagoing craft, viz, some native cascos or cargo boats and two floating derricks belonging to private parties (Rec., 23–24, 69.)

The treaty of peace between the United States and Spain provided that "stands of arms, uncaptured war vessels, small arms, guns of all calibers, with their carriages and accessories, powder, ammunition, live stock, and materials and supplies of all kinds belonging to the land and naval forces of Spain in the Philippines and Guam, remain the property of Spain." Under this agreement so much of the public property captured at the Cavite Arsenal, and elsewhere on land, remaining unused at the date of the exchange of ratifications (April 11, 1899), was subsequently restored to Spain.

On July 20, 1899, this libel was filed against the *Don Juan de Austria*, *Isla de Cuba*, *Isla de Luzon*, all the property taken from the sunken vessels, all the vessels and other property taken afloat, and all the property captured ashore, on the ground that it had all been appropriated to the use of the United States, and that its money value should be deposited subject to the jurisdiction of the court, and should be condemned as prize for the benefit of the libellant and his naval force. (Rec., I–V.) The libel was subsequently amended so as to cover some property not specifically covered by it. (Rec., XV, 147.) Copies of the libel were served upon the United States attorney for the District of Columbia and the Secretary of the Navy, and a rule was issued upon the latter requiring him to show cause why the value of the alleged prize property should not be deposited subject to the order of the court and why the said property should not be condemned as prize. (Rec., VI–VIII.)

On January 8, 1900, the answer of the United States was filed, admitting the fact of the capture of the property to which the libel related, but denying that the *Don Juan de Austria, Isla de Cuba, Isla de Luzon*, the property captured on board of them, and the property captured on land, were subject to condemnation as prize, and praying that due proof should be made of all the facts and circumstances of the other captures alleged to have been made as prize. (Rec., VIII–X.) This answer was subsequently amended in a few particulars. (Rec., XII, XV, 147.) On April 25, 1900, the Secretary of the Navy filed a separate answer, concurring in the answer of the United States. (Rec., XI.) On March 26, 1901, an intervening libel was filed by Edwin F. Stovell in behalf of himself and the officers and crew of the *Nanshan*, to which an answer was filed by the libellant. (Rec., XIII, 144.)

The case having been heard by the late Judge Bradley, a decree of condemnation and distribution was filed November 5, 1901, to the following effect:

The *Isla de Cuba, Isla de Luzon, Don Juan de Austria*, the *Manila*, and all other captured vessels named in the appraisement, except such as may have been restored to private owners, and all property captured upon or belonging to any of the said vessels, or any other vessels which were sunk or otherwise destroyed on May 1, 1898, were held to be lawful prize of war.

All property captured ashore and all nonseagoing craft belonging to the arsenal, as well as all cascos and floating derricks not belonging to the King of Spain,

were held not to be prize, and as to such property the libel was dismissed.

The *Nanshan* and *Zafiro* were held not entitled to share in any of the prize property, and the prize was held to have been of inferior force to the vessels making the capture.

It was ordered that upon the ascertainment of the value of the property condemned as prize the Secretary of the Navy should deposit an amount equal thereto with the Treasurer of the United States, subject to the further orders of the court. (Rec., 159–161.)

An appeal was then taken by the United States, a cross appeal by the libellant, and another appeal by the intervenor. (Rec., 161–163.)

ASSIGNMENTS OF ERROR.

The supreme court of the District of Columbia erred:

1. In holding that the Spanish vessels of war, *Don Juan de Austria*, *Isla de Cuba*, and *Isla de Luzon*, together with whatever guns, munitions of war, equipment, stores, and other articles may have been found upon them, were captured by a fleet of the United States, under the command of the libellant, under such circumstances that the said vessels and other property should be condemned and forfeited to the United States as lawful prize of war, for the benefit of the captors.

2. In holding that certain guns, munitions of war, equipment, stores, and other articles on board of Spanish vessels of war which were sunk or otherwise

destroyed by a fleet of the United States, under the command of the libellant, were captured by the said fleet under such circumstances that the said property should be condemned and forfeited to the United States as lawful prize of war, for the benefit of the captors.

3. In holding that the libellant and the officers and enlisted men of the United States Navy who took part in the naval engagement in Manila Bay, and in behalf of whom he brought this suit, are entitled to receive a moiety of the amount of the value of the said *Don Juan de Austria*, *Isla de Cuba*, and *Isla de Luzon*, and of the said guns, munitions of war, equipment, stores, and other articles which were upon the said vessels and upon Spanish vessels of war which were sunk or otherwise destroyed.

BRIEF OF ARGUMENT.

It is conceded on the part of the United States that some of the property concerning which the libel in the present case has been filed was captured under such circumstances as to entitle the libellant to proceed in a district court of the United States for the condemnation of such property as prize. It is further conceded that such property having been appropriated to the use of the United States, the libellant was entitled to file his libel in the court below, and is entitled to a judgment for one-half of the reasonable value of such property at the time that it was appropriated, the amount of the judgment to be distributed as prize money to him and the officers and men of the naval force under his command. The property so conceded to have been taken

as prize includes the Spanish seagoing vessels, both public and private, with the property found on board of them and the equipment belonging to them, which were captured at the battle of Manila Bay or soon afterwards in the course of active naval warfare, and have not been restored to their owners.

In addition to this property the libel related to two other classes of property which the court below has held should be condemned as prize for the libellant's benefit, viz, vessels of war sunk or otherwise destroyed, but raised and reconstructed for the United States Navy, by a foreign corporation, after hostilities ceased, and property recovered from such vessels of war and from others which were not raised. To these two classes of property the appeal of the United States relates. There were also two other classes of property, viz, property taken on land and nonseagoing craft, as to both of which the libel was dismissed, and to these latter classes the libellant's appeal relates. The appeal of the intervenor relates only to a question of the distribution of the prize fund, as to which the United States has nothing to say.

Before proceeding to discuss in detail the questions raised by each appeal, certain general principles, bearing upon all these questions, may be considered.

GENERAL PRINCIPLES.

It is clear, in the first place, that no citizen can have any right to have any vessel or property condemned as prize for his benefit, except by authority of an act of Congress. If a vessel or other property is taken

from the enemy under such circumstances as bring the case within the true intent and meaning of the prize statutes, then the captors have a right to prize money; but if not, then such vessel or property belongs to the United States alone. The law on this subject is thus stated in *The Siren* (13 Wall., 389–392):

> Prize was wholly the creature of the Crown. No one could have any interest but what he took as the gift of the King. Beyond this he could claim nothing. The reasons upon which the rule was founded were: That right of making war and peace was exclusively in the Sovereign; that the acquisitions of war must therefore belong to him, and that their disposal might be of the utmost importance for the purposes both of war and peace. It was held that it must be presumed from these considerations that the Government did not intend to divest itself of this important attribute except in so far as such a purpose was clearly and unequivocally expressed. The right is not the private property of the Sovereign, but a trust confided to him for the public good. In private grants the construction is most strongly against the grantor. In all concessions touching capture the opposite rule prevails. A presumption arises against the grant, and it can only be rebutted by language so explicit as to leave no room for doubt upon the subject. (*The Elsebe*, 5 Rob., 155.) The lord high admiral exists now only in contemplation of law. It was deemed expedient to assign to him a certain portion of the rights of the Crown to maintain the dignity and splendor of his office. (*The Maria Francoise*, 6 Rob., 293.) Hence the doc-

trine of droits of the admiralty, and of captured property which belonged to the King *virtute coronæ*. The lord high admiral is now represented by the King, who holds the office, but in a capacity distinct from his regal character, and the droits which belonged to the office, so far as they still subsist and are not otherwise disposed of, have in the progress of time become reattached to the Crown. (*The Rebeckah*, 1 Rob., 227; *The Mercurius*, id., 81; *The Joseph*, 1 Gall., 545; 3 Reeve's Hist. of Eng. Law, 197.)

* * * * *

While the American colonies were a part of the British Empire the English maritime law, including the law of prize, was the maritime law of this country. From the close of the Revolution down to this time it has continued to be our law, so far as it is adapted to the altered circumstances and condition of the country, and has not been modified by the proper national authorities. (*Thirty Hogsheads of Sugar* v. *Boyle*, 9 Cr., 198.) In our jurisprudence there are, strictly speaking, no droits of admiralty. The United States have succeeded to the rights of the Crown. No one can have any right or interest in any prize except by their grant or permission. All captures made without their express authority inure *ipso facto* to their benefit. Whenever a claim is set up its sanction by an act of Congress must be shown. If no such act can be produced the alleged right does not exist. The United States take captured property not as droits, but strictly and solely *jure reipublicæ* (*The Joseph*, 1 Gall., 558; *The Dos Hermanos*, 10 Wheat., 310.)

It was accordingly held in that case that the capture having been made by a joint military and naval force, and there being no statute touching joint captures by the Army and Navy, the capture inured "exclusively to the benefit of the United States." This decision was in affirmance of the view held by the district court, in the statement of which Lowell, J., had said as follows:

> The English cases are very numerous in which prizes are condemned to the admiral, or, in later times, to the King in his office of lord high admiral, and not to the captors. It may well be conceded that the United States have succeeded to the rights in prize both of the Crown and of the lord high admiral, and that Congress has the right to grant prize money to whomsoever it pleases, without regard to these ancient distinctions. Still, in construing the prize acts it is useful to recollect that by the English law the grants of prize money had their well-understood limitations, and that a condemnation in prize was not necessarily a condemnation to captors; and that there were prizes which were not granted to either the admiral or the captors, such as vessels voluntarily brought in on revolt by their own crews and vessels seized in port before declaration of hostilities; so that there were three different kinds of condemnation—to the King, to the admiral, and to the captors. I have no doubt that some of the same distinctions and limitations hold good in this country to-day. (*The Siren*, 1 Low., 280, 283.)

In *The Emulous* (1 Gall., 563, 565, 569) Story, J., said:

> All property captured belongs originally to the Crown, and individuals can acquire a title thereto in no other manner than by a grant from the Crown. * * * It is now clear, as I have already stated, that all captures in war inure to the Sovereign, and can become private property only by his grant.

His decision in this case was afterwards reversed in *Brown* v. *United States* (8 Cr., 110), but on the ground that the property in question was found on land within the United States, and, being private property, could not be condemned as enemy's property without a legislative act authorizing its confiscation. Neither the decision of this court nor the opinion rendered at the time of that decision controvert in any respect Judge Story's fundamental proposition above quoted. It seems indisputable that where an enemy's vessels or other property pass from the enemy's control and come in any sense within the control of a force of the United States, the question as to whether such vessels or other property are prize of war for the benefit of the captors, or not, must depend upon the law as applied to the conditions existing when the force of the United States secures such control. The question is not merely whether such control exists, but whether it originates under the conditions which the law recognizes as giving rise to prize rights. These conditions may be of two kinds—the conditions affecting the property itself, and those affecting the force which has come into control of it—and in either event

the law must operate upon them, to determine the question of prize or no prize, at the time the control is obtained. Thus, in the case of *The Siren* (already cited), where the conditions under consideration were of the latter sort, and the vessel was held not to be a prize, the reason was that at the time that she came into the control of a force of the United States that force, though a naval force, capable, when acting alone, of taking vessels and property as prize, was acting conjointly with a force of the Army, so that the capture was regarded as a joint capture by the Army and Navy, and, as there was no statute authorizing captors to participate in the fruits of property so captured, no prize money could be obtained.

So in the case of *Mrs. Alexander's Cotton* (2 Wall., 404), where the conditions affected the property itself, it having been taken on land and not on board of any vessel, it was held that the property was lawfully captured, but "not for the benefit of captors," because the prize law excluded "property on land from the category of prize for the benefit of captors."

The bearing of these authorities upon the present case is this, that neither capture from the enemy nor appropriation to the use of the United States can give the captors any right to prize money for the property captured, unless the conditions under which the property came into the control of the captors are those which the statute (a statute which is to be strictly construed in favor of the United States and against the captors) recognizes as entitling the captors to receive

this money. Hence, unless it be held that the statute, strictly construed, makes any given class of property taken under any given circumstances a prize for the benefit of the captors, no prize money can be recovered on account of such property.

It was, however, contended in the court below, in the libellant's behalf, that the United States *could not*, under the statutes in force in 1898, acquire for itself, by any act of its naval force, any property whatever from an enemy, except subject to the adjudication of a prize court in favor of the captors. This fundamental contention was reached by a process of induction as follows: Property captured by a naval force is prize. It is so because of sections 4613 and 4630 of the Revised Statutes (sections 33 and 10 of the act of June 30 1864; 13 Stats., 315, 309), which read as follows;

> 4613. The provisions of this title shall apply to all captures made as prize by authority of the United States, or adopted and ratified by the President of the United States.
>
> 4630. The net proceeds of all property condemned as prize shall, when the prize was of superior or equal force to the vessel or vessels making the capture, be decreed to the captors; and when of inferior force, one-half shall be decreed to the United States and the other half to the captors.

The words "all captures made as prize" mean, it is said, all captures which can be "condemned as prize," i. e., all captures which are subject to adjudication and

condemnation in a court of admiralty, sitting in prize. Prior to the act of 1864 captures made by a naval force were of two kinds, viz, all property *other than* "ships and vessels, and the goods taken on board of them," such property being taken for the benefit of the United States alone; and "ships and vessels and the goods taken on board of them," the proceeds of which "shall, when of equal or superior force to the vessel or vessels making the capture, be the sole property of the captors; and when of inferior force, shall be divided equally between the United States and the officers and men making the capture." (Act of July 17, 1862, § 2, 12 Stats., 606; act of April 23, 1800, § 5, 2 Stats., 52.) *Both* kinds of captures, it is said, had to be first "adjudged good prize" by a court of admiralty before the title to the capture or to its proceeds was valid. Section 10 of the act of 1864 (R. S., § 4620) was a statute of distribution, granting to the captors the same rights which they had before under section 2 of the act of 1862, and *in addition* similarly extensive rights in all other property which before the act of 1864 would have been "condemned as prize" to the United States alone, i. e., all the property which the United States by the action of its naval force could have acquired from an enemy, whether on land or on the water. Prior to the act of 1864 the United States, by the action of its naval force, could have acquired certain kinds of property from an enemy, and could have held it for its own, but always subject to its condemnation as prize, and after the passage of that act the rights of the

United States passed to the captors, either as to the whole or as to half, under sections 10 and 33.

The fatal defect in this reasoning is the blind assumption that the United States, the fountain of all prize rights, was itself subject to the jurisdiction of its courts of admiralty as to all property which it might take by the action of its naval force from the enemy, even when it had granted no prize rights therein to the captors. It is evident that if a single instance can be found where the United States has, or has ever had, the right to take, without any adjudication, either previous or subsequent, any property captured by its naval forces, the whole fabric of the contention must collapse. As a matter of fact, there are several such instances.

Of course, if the reasoning of libellant's counsel be sound, it must have been true as to naval captures made before the act of April 23, 1800, as well as to those made after that date. Yet the act of March 2, 1799 (1 Stats., 709), provided as follows:

> SEC. 5. *And be it further enacted*, That all captured national ships or vessels of war shall be the property of the United States—all other ships or vessels, being of superior force to the vessel making the capture, in men or guns, shall be the sole property of the captors—and all ships or vessels of inferior force shall be divided equally between the United States and the officers and men of the vessel making the capture.
>
> SEC. 6. *And be it further enacted*, That the produce of prizes taken by the ships of the United

States, and bounty for taking the ships of the enemy, be proportioned and distributed in the manner following, to wit:

* * * * *

13. The bounty given by the United States on any national ship of war, taken from the enemy and brought into port, shall be for every cannon mounted, carrying a ball of twenty-four pounds or upwards, two hundred dollars; for every cannon carrying a ball of eighteen pounds, one hundred and fifty dollars; for every cannon carrying a ball of twelve pounds, one hundred dollars; and for every cannon carrying a ball of nine pounds, seventy-five dollars; for every smaller cannon, fifty dollars; and for every officer and man taken on board, forty dollars, which sums are to be divided agreeably to the foregoing articles.

Can it be contended that when a captured national ship or vessel of war was "brought into port" a court of admiralty had to intervene and condemn the vessel as good prize before it could be "the property of the United States" under this statute? As the national character of the vessel was a patent fact, there could be no claimants, no one whose interest in the vessel required the protection of judicial proceedings. As no sale of such a vessel was contemplated, no action of a court was necessary in order to give a clear title to a purchaser. No question of relative force could arise. In short, no possible reason for such intervention of a court of admiralty can be suggested, and it is submitted that the statute contemplated no such intervention. Here, then, is a clear instance of the right

of the United States to hold a naval capture as its own "property" without condemnation.

The act of July 2, 1864, § 7 (12 Stats., 377), provided as follows:

> *And be it further enacted*, That no property seized or taken upon any of the inland waters of the United States by the naval forces thereof, shall be regarded as maritime prize; but all property so seized or taken shall be promptly delivered to the proper officers of the courts, or as provided in this act and in the said act approved March 12, 1863.

By that act and the act of March 12, 1863 (12 Stats., 820), the property was to be delivered to the agents of the Treasury, who were to sell it, unless it were appropriated to the use of the Government, without any condemnation by a court of admiralty; and even in the cases where, no Treasury agent being at hand, such property might be delivered to the proper officers of the courts, there is no suggestion that it would have to be condemned by a court of admiralty. Here is another instance of a naval capture of enemy property for the United States alone, without condemnation as prize.

Again, in the case of *The Siren* (13 Wall., 389) the capture was undoubtedly a naval capture in one sense, being made by a naval force, and it took place February 17, 1865, so that if a prize, it became such under the act of June 30, 1864; but the Supreme Court held that it could not be a prize, because of the cooperation of the Army (though the actual capture was by the

Navy), and "no provision is found in any of these statutes touching joint captures by the Army and Navy." The words "no provision" are sweeping, and amount to this, that no part of the act of 1864 applied to such a capture at all, so that no proceedings under that act were necessary. The United States was entitled to the property *jure reipublicæ*, and not under the act of 1864 at all. Even if it should be thought that this case, being one of "joint capture," though the Navy did the actual work of capture, is not precisely in point, certain statements in the opinion have a bearing on the present contention. It is said, "all captures made without their express authority [i. e., the authority of the United States] inure *ipso facto* to their benefit." The words *ipso facto* indicate that no judgment of a court of admiralty is required. It is also said, "The United States take captured property, not as droits [of admiralty], but strictly and solely *jure reipublicæ*." Capture as droits of admiralty involved condemnation to the Lord High Admiral, but the United States take such captured property as it is entitled to "solely *jure reipublicæ*," i. e., without condemnation. These statements do not refer exclusively to cases of "joint capture," but to all captures not made under an act of Congress authorizing them to be made for the benefit of the captors.

It is true that in *The Siren* Judge Lowell, in the district court, had considered condemnation to the United States desirable as a general rule, even if not essential (*The Siren*, 1 Low., 280), and that this court affirmed his decree; but that case involved valid claims for

salvage, and on account of a collision, which called for the action of a court, and the district attorney had seen fit to seek condemnation of the vessel. Under these circumstances, the United States having submitted to the jurisdiction, and the ends of justice having been attained, this court may well have decided to let the proceedings be concluded by a simple affirmance; but the language of the decision is clear to the effect that the United States is entitled to take captured property "solely *jure reipublicæ*"—i. e., without condemnation.

The case of *Mrs. Alexander's Cotton* (2 Wall., 423) would seem, however, to make argument unnecessary. The court there said:

> We think it clear that the cotton in controversy was not maritime prize, but should have been turned over to the agents of the Treasury Department, to be disposed of under the act of March 12, 1863.

If this decision means anything, it means that the United States, before the act of June 30, 1864, took property captured by a naval force on land not as maritime prize, but solely *jure reipublicæ*. That decision deprives the contention of libellant's counsel of all foundation whatever. A naval capture of property on land is *not* maritime prize and, hence, sections 4613 and 4630 do not apply to it. According to the libellant's contention the court should have held that the property was not maritime prize for the benefit of the captors, but was such for the benefit of the United States, so that the condemnation should be to the

United States; but, instead of this, it was held that the property, though a perfectly lawful capture by a naval force, was not maritime prize at all and that there should have been no condemnation; in fact, no proceedings in admiralty whatever.

The effect of these evident instances of the recognition of a right of the United States to make a naval capture for itself alone, without condemnation as prize, can not be avoided by saying that this right can only exist in consequence of some statute. It can not fairly be contended that in the case of *Mrs. Alexander's Cotton*, for instance, the act of March 3, 1863, applied to all captures on land, but that otherwise captures by a naval force on land would have been maritime prize for the benefit of the United States. Such a contention wholly overlooks the last section of that act, reading as follows:

> SEC. 7. *And be it further enacted*, That none of the provisions of this act shall apply to any lawful maritime prize by the naval forces of the United States. (12 Stats., 821.)

What *Mrs. Alexander's Cotton* held was that property captured on land "was not maritime prize," so that there should have been no condemnation by a prize court, not even to the United States, and that therefore the act of 1863 applied to it. Had it been maritime prize for the benefit of the United States, though not for that of the captors, the act of 1863 could not have applied to it at all. This is therefore a manifest instance of a right to retain a naval capture, without adjudication as prize, where no statute had expressly

authorized such retention. As to the act of 1799, the answer to the contention is that a statutory declaration that captured national ships of war should belong to the United States was needed, because it was desired at the same time to grant prize rights in all other captured vessels of an enemy, and to give bounty, in lieu of prize, for the captures to which prize rights were not to extend. There was no previous obligation upon the United States to have ships of war condemned if it wished to retain them, but the statute simply declared that they would be retained, and the fact that no condemnation was necessary followed as a matter of course. Another reason for the declaration was that under the ordinances of the Continental Congress all captured vessels were prize, at least since the repeal of the bounty ordinance as to vessels of war.

It is true that in *United States* v. 269½ *Bales of Cotton* (1 Woolw., 236, 245), Miller, J., said that "there are certain reasons, founded upon the general principles of international law, why every capture upon the high seas, *jure belli*, shall be carried before a prize court," but the reasons which he gives apply to the high seas only, to which he confines his statement, and they do not apply to public property captured from an enemy. As to all ships and vessels and their cargoes taken on the high seas, the statutes in force in 1898 required condemnation whether the property was public or private, but this was obviously because the captors had rights in all such property. As to property taken from vessels of war sunk or otherwise destroyed, for which

bounty was given in lieu of prize, there is no need of adjudication, even by the view taken by Miller, J., and it is submitted that the statutes never contemplated it.

It being indisputable, under the decision in *Mrs. Alexander's Cotton*, that the United States can, under certain circumstances, acquire the property of an enemy for itself, by the act of its naval force, without making such property maritime prize within the meaning of section 4613 of the Revised Statutes, it follows that the contention that all property captured by a naval force is prize can not stand, and that, on the contrary, only such captures as the statutes expressly provide shall be for the benefit of the captors can so inure.

Proceeding upon the erroneous theory that "capture" and "prize" are convertible terms, the counsel for Admiral Dewey undertake in their brief to define what they call "the essentials of capture," as:

(*a*) A subject of capture.

(*b*) A capturing force.

(*c*) The taking of the subject of capture from the possession of the enemy into the possession of the captors.

While this definition is true as far as it goes, it is inadequate for the purposes of this case, because the question is not whether the property libeled was captured, but whether it was captured as prize for the benefit of the captors. Hence for those purposes another "essential" must be added, viz: The taking of

the subject of capture under such conditions as make it, by virtue of the statutes, prize for the benefit of the captors.

The application of the general principles just dwelt upon will now be considered.

QUESTIONS RAISED BY THE APPEAL OF THE UNITED STATES.

1.

STATUS OF VESSELS SUNK OR DESTROYED IN ACTION AND AFTERWARDS RAISED AND RECONSTRUCTED.

[See first assignment of error.]

The libel in this case was filed against, *inter alia*, the Spanish war vessels *Don Juan de Austria*, *Isla de Cuba*, and *Isla de Luzon*, which were sunk and burned at the close of the action of May 1, 1898, but raised and reconstructed for the United States Navy, by a foreign corporation, after hostilities ceased. This item is not inconsiderable, the net value of these vessels, after deducting the cost of raising them, bringing them to Hongkong, and repairing them, being estimated by Naval Constructor Hobson, who had charge of the repairs, at $306,000, according to his official report.

The position of the Government in regard to these vessels has always been as follows: At or immediately after the close of the battle, they were sunk and otherwise destroyed, to such an extent that the libellant's naval force was powerless to do anything with them of their own resources, and it cost very nearly 50 per cent of their ultimate value to raise them and make

them what they were before. They were officially reported as destroyed, and for five months no attempt was made to do anything with them. After hostilities ceased, the vessels were inspected, and more than six months after the battle they were raised by foreign contractors. These subsequent acts, done after hostilities ceased, were not a part of the act of capturing these vessels, and had no effect upon their legal status as "sunk or otherwise destroyed;" and the Government admits that, assuming that these vessels had their full complement of men on board, the libellant and his naval force are entitled to receive $49,100 as bounty for their destruction under section 4635 of the Revised Statutes.

The court below, however, held—

> that the libellant is entitled to an adjudication of one-half of the value of these vessels to the captors, such value being the net value shown by the evidence, less the cost of repairs and cost of raising, it being conceded that the Spanish fleet alone was of inferior force, and that the question of the right to count the land batteries, mines, and torpedoes as part of the Spanish force under section 4630, R. S., U. S., was determined against libellant in *Dewey* v. *United States* (178 U. S., 510).

The question in regard to these vessels is this: If an enemy's vessel of war, when overcome by a naval force of the United States, is no longer afloat, but lies on the bottom, and can only be made to float by elaborate wrecking operations which are not within the

power of such naval force to carry out, but must be performed by parties who make a business of such work, and if such vessel is also so far destroyed by fire above her water line as to make her useless as a vessel of war without substantial reconstruction, and if the United States Government, after hostilities cease, makes a contract under which such vessel is subsequently floated, reconstructed, and refitted, by the contractors, is she a "captured vessel" within the meaning of section 4615 of the Revised Statutes, and a proper subject of proceedings in prize?

In accordance with the general principles of prize law, already considered in this brief, it is clear that unless the statute, strictly construed, makes an enemy's vessel of war, recovered and reconstructed under such conditions, a prize for the benefit of the captors, no prize money can be due on account of such vessel.

The first point to be noticed in this connection is that the statutes regulating naval prize make a distinction between hostile vessels of war and other vessels of an enemy. If the latter are irrecoverably sunk or totally destroyed in the attempt to capture them, or in order to prevent their being recaptured, so that there is nothing left ot them or of the property on board of them, which can either be sent in as prize, or sold, or appropriated for the use of the Government, no benefit whatever accrues to the naval force concerned in the affair, and even where property is sold or appropriated to the use of the Government, the prize money obtainable is strictly limited to the appraised

value of such property; whereas, in the case of hostile vessels of war, the naval force which sinks or destroys them is entitled, under section 4635, to bounty as a substitute for prize money.

The reason for this distinction is obvious. In modern warfare, as distinguished from piracy and brigandage, the main object of all captures is not to enrich the capturing force, or its country, but to injure the enemy and thus shorten the war. Some captures may incidentally enrich the captors themselves or the government of their country, but the capture of prisoners, for instance, while the greatest injury to the enemy, is a positive disadvantage to the capturing force, as the prisoners must be guarded, housed, and fed.

In old times, it is true, the contrary principle prevailed, and enemy property was captured for the sake of its acquisition, while prisoners were either held to ransom, for the enrichment of their captors, or else killed; but the gradual tendency of civilization has been not merely to make war more humane, but to make it less predatory, and, if possible, more destructive. The sacking of cities is a thing of the past, and the capture of land booty, formerly upheld and regulated by law, is now recognized as an offense against military discipline as well as against humanity. This latter practice was, in fact, never authorized by any statute of the United States, although maritime prize was permitted and regulated until the passage of the act of March 3, 1899, section 13. (30 Stats., 1007.)

When an enemy loses a merchant vessel, he loses property only, but when he loses a vessel of war, he

loses what is much more important than the money value of the property, viz, available fighting force; and while the destruction of merchant vessels, in case they could not be captured, was not a thing to be encouraged, on account of the risk of violation of neutral rights, yet as any injury to an enemy's fighting force is a matter of great importance, and as this injury is as complete (unless the crew escapes) when an enemy's vessel of war is sunk or otherwise destroyed as when it is captured, our statutes, from 1800 to 1899, have given a substantial reward for the sinking or other destruction of hostile vessels of war. Hence when Lowell, J., said, "The grant [of bounty] is intended as a substitute for the prize itself" (*The Selma*, 1 Low., 30, 32), and when Field, J., referred to "prize money or bounty in lieu of it" (*Porter* v. *United States*, 106 U. S., 607), they did not mean that bounty was given merely because the prize was lost, but that bounty was given as a reward for the injury inflicted upon the enemy's naval fighting force, for which injury a reward was considered to be due, whether the hostile vessel of war was captured or destroyed

In view, then, of the policy of granting a reward for the injury to the enemy's fighting force, by the sinking or destruction of vessels of war, what degree of destruction was necessary to bring a case within the bounty statute? The statute (Rev. Stats., sec. 4635) reads as follows:

> SEC. 4635. A bounty shall be paid by the United States for each person on board any ship or vessel of war belonging to an enemy at

> the commencement of an engagement, which is sunk or otherwise destroyed in such engagement by any ship or vessel belonging to the United States or which it may be necessary to destroy in consequence of injuries sustained in action, of one hundred dollars, if the enemy's vessel was of inferior force, and of two hundred dollars, if of equal or superior force, to be divided among the officers and crew in the same manner as prize money; and when the actual number of men on board any such vessel can not be satisfactorily ascertained, it shall be estimated according to the complement allowed to vessels of its class in the Navy of the United States; and there shall be paid as bounty to the captors of any vessel of war captured from an enemy, which they may be instructed to destroy, or which is immediately destroyed for the public interest, but not in consequence of injuries received in action, fifty dollars for every person who shall be on board at the time of such capture.

Does this statute only affect cases of total destruction of the enemy's vessel, or does it extend to any cases where such vessel, though incapable of being sent in for adjudication at the time, might still have some value if recovered and reconstructed or repaired? In answering this question it is worth while to notice the origin and history of naval bounty. Originally in England it was not limited to cases of the sinking or destruction of vessels of war, and was given in addition to prize money, not in lieu of it.

The first British statute on the subject appears to be 13 George II, c. 4, s. 15, worded as follows:

> And as a further encouragement to the officers, seamen, marines, soldiers, and others on board His Majesty's ships of war, as also of privateers, to attack, take, and destroy any ships of force belonging to the enemy, be it enacted by the authority aforesaid that there shall be paid by the treasurer of His Majesty's navy, upon bills to be made forth by the commissioners of the navy, to be paid according to the course thereof, without fee or reward, unto the officers, seamen, marines, soldiers, or others that shall have been actually on board such of His Majesty's ship or ships of war, or privateer or privateers, in any action where any ship or ships of war, or privateers shall have been taken from the enemy, sunk, burnt, or otherwise destroyed, £5 for every man which was living on board any ship or ships so taken, sunk, burnt, or otherwise destroyed, at the beginning of the engagement between them.

Precisely the same language is found in the subsequent acts of 17 George II, c. 34, s. 18; 29 George II, c. 34, s. 21; 17 George III, c. 7, s. 16, and 33 George III, c. 66, s. 40.

The Continental Congress gave a bounty of $20 for each cannon and $8 for each man taken on any British vessel of war made prize of by any Continental vessel of war (Ordinance of November 15, 1776; 1 Jour. of Cong., 430); but this was done to stimulate captures that would increase American naval resources, and no

bounty was given in cases of sinking or destruction. Under the act of March 2, 1799 (1 Stats., 709–715), a similar bounty was given for the capture of hostile vessels of war, in lieu of prize money, for when such vessels were captured they were not prize for the benefit of the captors but became the property of the United States.

The act of April 23, 1800 (2 Stats., 53), however, abolished the Government's right to appropriate hostile vessels of war, and it made them subject to adjudication in prize, like other captured vessels. Section 7 of this act was a distinct recognition of the modern idea that war should be destructive, but not predatory. Recognizing that in naval engagements the important thing was to reduce the enemy's fighting force, and that such reduction of force was equally important whether it was accomplished by capture or by destruction, and should lead to some reward in either event, Congress enacted:

> That a bounty shall be paid by the United States of twenty dollars for each person on board any ship of an enemy at the commencement of an engagement, which shall be sunk or destroyed by any ship or vessel belonging to the United States of equal or inferior force, the same to be divided among the officers and crew in the same manner as prize money.

Prior to the enactment of this section the victors in the most stubborn sea fight were, under the American statutes, entitled to nothing whatever by way of special

reward unless they brought an enemy's vessel or property into port. This section introduced the rule that if, on account of the sinking or destruction of an enemy's ship of greater force than, or equal force with, the American vessel in engagement with her, she could not be held as prize, bounty should be paid, but that if an enemy's ship were captured, the captors would be entitled to prize money only. Bounty was thus for the first time made a substitute for prize money, recoverable when the enemy's vessel was of equal or greater force, and only in cases where, owing to the sinking or destruction of such vessel, there could be no prize money. It was apparently assumed that if the enemy was of inferior force his vessel would be captured, and not sunk or destroyed.

It is to be observed, moreover, that the right to bounty was not, like that of prize money, necessarily limited to cases of victory over the enemy's naval force. In an action where the hostile force was equal or superior, the sinking or destruction of any one or more of the enemy's war vessels would give rise to a right to bounty, even though the action as a whole should result in the defeat of the American force. Even if it was itself finally compelled to surrender, its right to bounty would remain.

The act of June 26, 1812, section 9 (2 Stats., 761), provided for payment of bounty to privateers for any armed ship or vessel of the enemy, of equal or superior force, when burnt, sunk, or destroyed. The act of March 3, 1813 (*id.*, 816), gave a very large bounty for

the burning, sinking, or destroying of British armed vessels of war by any persons not belonging to the navy or privateers. This latter act was merely intended to encourage the destruction of vessels, and has nothing to do with the general system of prize and bounty.

The act of July 17, 1862, section 4 (12 Stats., 606), which was reenacted in the act of June 30, 1864, section 11 (13 Stats., 310), and afterwards in section 4635 of the Revised Statutes, enlarged the right to bounty by providing that it should be paid in all cases where an enemy's vessel of war was sunk or otherwise destroyed, either in an engagement or in consequence of injuries received in action, or after capture, where such destruction was for the public interest. The concluding provision of the section, applying to cases of destruction after capture, was required in order to carry out fully the principle on which the bounty system had been based ever since 1800, viz, to give a reward, in place of prize money, where the enemy's vessel, owing to its destruction, could not be sent in to a prize court. The act of 1800 had given this reward only where the enemy's vessel was of equal or superior force, and only when she was sunk or destroyed at the time of the engagement, while that of 1862 gave rewards, differing in amount according to circumstances, in all cases where, owing either to the engagement itself or to conditions affecting the public interest immediately after capture, an enemy's vessel of war was sunk or destroyed.

This review of the statutes shows conclusively that prior to the act of June 30, 1864, the sole object of the

law, as now found in section 4635 of the Revised Statutes, was to provide a reward in the nature of prize money in all cases where, owing to the sinking or destruction of an enemy's vessel of war either during or immediately after an engagement, prize money could not be obtained, and not merely to provide, as the British statutes had done, a special reward for successful gallantry in combat with a vessel of war, whether such vessel was captured, sunk, or destroyed. The rights to prize money and to bounty were alternative rights, the latter right being at first somewhat limited, but afterwards enlarged (by the act of 1862) so as to come into existence in every case where an enemy's vessel of war was overcome under circumstances which then or immediately thereafter prevented her being the subject of adjudication as prize. Hence Lowell, J., said, "The grant [of bounty] is intended as a substitute for the prize itself" (*The Selma*, 1 Low., 30, 2), and Field, J., referred to "prize money or bounty in lieu of it" (*Porter* v. *United States*, 106 U. S., 607).

The rights of prize and of bounty being, therefore, before the act of June 30, 1864, complete alternatives of each other, it is easy to draw the line between them and to say where one ended and the other began. There being no law under which rights of prize could accrue unless prize property had been physically brought within the control of the "judge of the district to which such prize is ordered to proceed" (act of 1862, § 5) for adjudication, it is evident that under

the act of 1862 bounty was due in all cases where in a naval action a vessel of war was lost to the enemy, but could not be sent to an American port for adjudication, because it was sunk or destroyed either during the action, or in consequence of injuries received therein, or on account of some controlling public necessity, provided in the last instance that the destruction had taken place immediately after capture. Whether bounty or prize money was due, the reason for the reward was the same, viz, the injury inflicted upon the enemy's fighting force by the loss of the vessel, and the question as to which was due, bounty or prize money, depended in each case upon whether the vessel could or could not be sent in for adjudication. If it could not, then bounty alone was obtainable, while if it could, then a prize crew should be put aboard and the proper proceedings in prize should be instituted as soon as the vessel reached the designated port. The only circumstance under which neither bounty nor prize money could be obtained was where a prize was lost on its way to port, a possibility which the law did not provide for either at that time or subsequently, so that it may be disregarded.

The question of whether an enemy's vessel of war which had been overcome was the subject of prize proceedings or of bounty was thus determined by the statutes, and was in no way affected by the policy of the Navy Department or the preference of the parties who were entitled to claim either bounty or prize money.

The words "sunk or otherwise destroyed," in section 4 of the act of 1862, must, therefore, at the time that act was passed, have been equivalent to "rendered incapable of serving as a part of the enemy's fighting force, and also incapable of being sent in for adjudication." The captors of a vessel taken as prize had no rights at all in her before adjudication, except to put a prize crew aboard and send her in for adjudication. (*Home* v. *Camden*, 2 H. Bl., 533; *The Elsebe*, 5 Rob., 178; *The Felicity*, 2 Dods., 381.) Even the fact that a vessel would bring more if sold on the spot where taken than at the port of adjudication would not justify such a sale. (*The Eole*, 6 Rob., 220; *The Leucade*, 2 Spinks, 228.) If she were aground and they could pull her off, they had, of course, a right to do so, just as they could supply her, if a sailing vessel, with any necessary spars or sails, or, if she were a steamer, repair her engines or supply her with coal; but the prize statutes have never made any provision for the carrying on of wrecking operations by the captors, or at their expense, for the purpose of floating a sunken vessel. The most probable reason for this is that, as the captors have no title to the proceeds of captured vessels or property until after adjudication, it was not to be expected that they would incur the cost of wrecking operations in regard to property which was not their own and to the proceeds of which they could have no title until a court decided in their favor. If an enemy's vessel of war was rendered incapable of being navigated or towed, without a resort to wrecking operations carried on by persons not belonging to the

naval force which overcame such vessel, she manifestly could not, under the act of 1862, have been the subject of proceedings in prize, because the naval force concerned had no rights which would entitle them to authorize outside parties to conduct wrecking operations.

It could not fairly have been contended, under the act of 1862, that where an enemy's vessel of war had been made incapable of floating, as far as the resources of the American naval force went, so that she could not be sent in for adjudication, no bounty should be paid, because she was neither annihilated nor sunk beyond the possibility of recovery. All that was needed to satisfy the conditions of the bounty sections of the act was that the vessel should no longer constitute an available part of the enemy's fighting force. To hold that the words "sunk or otherwise destroyed" necessarily meant annihilated or sunk beyond the possibility of recovery by any human means, would be as unreasonable as to hold that "permanent" means "lasting forever." It has repeatedly been held that a covenant for the permanent establishment for an institution in a certain place does not bind the covenantor never to remove it. It is enough that he should, at the time of establishing the institution, have no intention of removing it. (*Mead* v. *Ballard*, 7 Wall., 290; *Newton* v. *Commrs.*, 100 U. S., 548; *Texas*, &c. *Ry. Co.* v. *Marshall*, 136 *id.*, 393; *Sumner* v. *Darnell*, 128 Ind., 38; *Hardy* v. *Wiley*, 87 Va., 125.) Similarly, a reasonable construction of the words "sunk or otherwise destroyed" in the act of 1862, would cover all cases

where the vessel could not be raised and made available as a vessel of war without considerable expense and within a considerable length of time.

The title to whatever remained of an enemy's vessel of war which had been "sunk or otherwise destroyed," i. e., rendered incapable of serving as a part of the enemy's fighting force and of being sent in for adjudication, would depend of course upon the control of the waters in which the wreck might chance to lie. By the laws of war it would pass to the United States, *jure reipublicæ*, like property captured by a joint naval and military force (*The Siren*, 13 Wall., 387), provided the United States controlled the waters where it lay, but not otherwise. If an American naval force entered hostile waters, destroyed a vessel of war, and immediately withdrew, the property in whatever remained of such vessel would still be in the enemy; but if the American naval force stayed in control of those waters, the property in the destroyed vessel would be in the United States. It would be a case of capture, though not of prize for the benefit of the captors, and if the United States wished to make any use of whatever remained of such vessel, it could do so, without any liability to the captors. Such was manifestly the law under the act of 1862.

The act of June 30, 1864, section 1 (13 Stats., 310), introduced a new provision into the prize law as follows:

> If the captured vessel, or any part of the captured property, is not in condition to be sent in for adjudication, a survey shall be had

> thereon and an appraisement made by persons as competent and impartial as can be obtained, and their reports shall be sent to the court in which proceedings are to be had; and such property, unless appropriated for the use of the Government,[a] shall be sold by the authority of the commanding officer present, and the proceeds deposited with the assistant treasurer of the United States most accessible to said court, and subject to its order in the cause.

This provision, which now forms part of section 4615, Revised Statutes, is the alleged authority for the libel as regards the *Don Juan* and the two *Islas*. These vessels, it is contended, were "appropriated for the use of the Government," as prizes "not in condition to be sent in for adjudication." The meaning of this provision requires therefore very careful consideration.

In the case of merchant vessels and their cargoes the above-quoted provision of the act of 1864 increased the rights of the captors by enabling them to sell, either to the Government or to outsiders, such captured vessels or other property as could not, owing to their condition, be sent to a court for adjudication; but in the case of an enemy's vessels of war this new provision must be construed in connection with section 11 of the same act, which was a reenactment, word for word, of section 4 of the act of 1862, the section in regard to

[a] The words "unless appropriated to the use of the Government" refer to another provision of the same act, contained in section 27 (now section 4624, R. S.), that whenever any captured vessel or other property was taken for the use of the Government, before it came into the custody of a prize court, it should be appraised, and the survey, appraisement, and inventory should be sent to the court, with which also the value should be deposited.

bounty. It is a familiar rule of construction that all statutes "relating to the same subject-matter shall be considered together" (*United States* v. *Babbit*, 1 Black, 55), and, *a fortiori*, all parts of the same statute should be so construed as to harmonize (Black, Interp. of Laws, 60.) In reenacting section 4 of the act of 1862 as section 11 of the act of 1864 Congress must have intended that this section should have the same meaning and effect as it had previously had, and the new provisions of section 1 must be so construed as to harmonize with that meaning and effect, there being nothing in the language of section 1 to prevent such harmonizing. Construing these sections in harmony with each other, it is clear that where an enemy's vessel of war remained afloat, but was so far injured that it could not safely be sent in for adjudication, it might, under this new provision, be sold either to the United States or a third party, if either were willing to take it, and would not necessarily have to be destroyed "in consequence of injuries sustained in action," as contemplated in the bounty section. Such a vessel, if sold, would not come into the category of vessels "sunk or otherwise destroyed," because its sale would obviate the necessity of destroying it. On the other hand, as regards an enemy's vessel of war which was not merely "not in condition to be sent in for adjudication," but actually "sunk or otherwise destroyed" within the meaning of the bounty section, so that it was beyond the power of the American naval force to navigate it at all, or even to float it, there is nothing to indicate that any change

was intended. Under section 4 of the act of 1862, the captors had no prize rights in such vessels, but received bounty instead, and there is nothing to indicate that the words of that section, which remained wholly unchanged, were intended to have a different meaning in the act of 1864 from what the same words had had in the act of 1862. The property in such vessels being in the United States, if it remained in control of the waters where the vessels lay, the captors had no right to sell such vessels (except for Government account), while no actual appropriation for the use of the Government could add anything to its rights of ownership. It could not possibly have been intended to grant bounty for the destruction of such vessels, and also prize money in case whatever remained of them could be sold, for bounty is a substitute for prize money. (*Porter* v. *United States; The Selma*, both cited above.) As to such vessels, therefore, the law remained as it had been under the act of 1862, and there was indeed no need for any change, since the rights of the officers and men concerned were already liberally provided for.

The final stage in the history of the law on this point, prior to the filing of the present libel, was the adoption of the Revised Statutes, when section 1 of the act of 1864 was reenacted as section 4615, section 27 as section 4624, and section 11 (in regard to bounty) as section 4635, with no change except trifling verbal ones.

It follows from what has been above stated that if an enemy's vessel of war is sunk or otherwise destroyed by a naval force of the United States, within

the meaning of section 4635, such naval force is entitled to bounty, but has no interest whatever in the vessel itself, which must be regarded as having been captured for the benefit of the United States. Hence, if the United States sees fit to raise the vessel if sunk, or to remove and use or sell portions of it if otherwise destroyed, it can do so without any liability to the captors whatever.

In the present case, however, the court below held that the *Don Juan de Austria*, *Isla de Cuba*, and *Isla de Luzon*, which, after the battle, were lying on the bottom, full of water, with their upper works destroyed by fire, but ultimately, after the cessation of hostilities, were raised, reconstructed, and refitted by a foreign corporation, under contract with the United States, and were appropriated to the use of the United States, were not "sunk or otherwise destroyed" within the meaning of section 4635, but were prize for the benefit of the captors, so that they are entitled to prize money, under section 4630, and not to bounty under section 4635.

In determining the status of these vessels, the first point to note is that if they were not prizes at the close of the battle they could not become so by subsequent raising and appropriation. Under the United States statutes, in force in 1898, vessels could be condemned as prize by virtue of capture only. If a vessel when finally captured were sunk or stranded, and the capturing naval force raised or floated it by its own unaided efforts, the vessel would be condemned as a prize, but only in consequence of the capture, not in

consequence of the act of the naval force in making the vessel float. Moreover, a condemnation is only possible in cases of capture by a naval force exclusively; and this rule is rigidly applied, so that captures made by a naval force, when conducting operations in conjunction with a land force, are not prizes at all. Not merely must the actual, physical taking have been done by a naval force, but the circumstances must have been such that no other force was in any way connected with the operations in the course of which the capture was made. (*The Siren*, 13 Wall., 389.)

Hence where, as in the present case, an enemy's vessel of war is sunk or burnt, or both, in action, and afterwards raised or reconstructed, or both, by any party outside the naval force, it is manifest that such vessel could not *become* a prize in consequence of such raising or reconstruction.

Similarly where, as in the present case, vessels have been appropriated for the use of the United States, such appropriation is only of importance as explaining why the vessels were not physically sent in for adjudication and as affecting the form of the decree to be entered in regard to them. The appropriation could not make these vessels prize if they were not so already, any more than it could prevent their being held to be prizes if they were originally captured as such. Whether a captured vessel is prize or not depends upon the circumstances under which it is captured, but, given those circumstances, capture alone

can make the vessel prize, and no subsequent appropriation to the use of the Government can affect the matter one way or the other.

If raising and appropriation can not make a vessel prize, it is manifest that they can not change the status of a vessel which is "sunk or otherwise destroyed," within the meaning of section 4635, so as to make it a prize. Not merely do the rights of the members of an American naval force, whether as captors of prizes or as parties entitled to bounty, accrue *in consequence* of a naval engagement, but also they must accrue at its close. The statutes certainly indicate that they do so accrue, although they are not absolute in either case until adjudication. There is nothing in the statutes to suggest that these rights can change after they have once accrued, and in fact section 4635 clearly indicates the contrary. This section provides a bounty where an enemy's vessel of war is captured and then "destroyed for the public interest," as well as where the destruction occurs in the engagement, but in the former case the destruction must take place "immediately," i. e., immediately after the engagement. If a captured vessel of war is destroyed immediately, bounty is obtainable, but if not, she remains a prize; and if lost from any cause, whether by destruction for the public interest or not, before she is brought to port, neither bounty nor prize money is obtainable. These statutes being worded as they are, it is inconceivable that Congress should have intended that where a vessel of war was sunk or otherwise destroyed, so that the

naval force concerned was clearly entitled to bounty, the fact that the Navy Department should afterwards (six months afterwards in the present case) see fit to raise the vessel, should turn the vessel into a prize, and the parties entitled to bounty into captors entitled to prize money.

Even if it could possibly be held that vessels which were, at the close of a battle, "sunk or otherwise destroyed," within the meaning of section 4635, could afterwards become prizes in consequence of being raised and appropriated, it could not be so held in the present case, as there was no raising or appropriation until after hostilities had ceased. As a matter of fact, there was no formal appropriation under section 4624 at all, but even if that fact be disregarded, it was impossible that the Government should appropriate these vessels as *prize property* until they were raised, for even on the theory of the court below, it was impossible to know, until they were raised, whether they were prizes or not. In *United States* v. *Sampson* (No. 273), it is in evidence that the Government had contractors at work upon the *Cristobal Colon* for some weeks, but finally abandoned the task of raising it, and the vessel was ultimately held to have been "sunk or otherwise destroyed," and bounty was decreed to be paid accordingly (*Sampson* v. *United States*, 35 C. Cls. R., 578.) Hence the Government's appropriation of prize vessels, as such, can not take place before such vessels are afloat.

The protocol between the United States and Spain, signed August 12, 1898, provided as follows:

> The United States will occupy and hold the city, bay, and harbor of Manila, pending the conclusion of a treaty of peace which shall determine the control, disposition, and government of the Philippines. * * * * Upon the conclusion and signing of this protocol, hostilities between the two countries shall be suspended. (30 Stats., 1742.)

These vessels were not raised until November 5, 19, and 23, 1899, respectively, and of course were not appropriated until those dates—three months after hostilities had ceased—or, in other words, until a time when prizes could no longer be taken. Conceding, for the sake of the argument, that a vessel which is no longer afloat, and which consequently is not held as a prize, can become a prize if raised and appropriated by the Government, such appropriation to have such an effect must occur during the period of hostilities. Vessels or other property can only become prize of war by some act of overt hostility to the nation to which such vessels or other property belonged. Even if it be conceded that the appropriation by the United States Government of the wreck of a Spanish vessel, *flagrante bello*, was an act of overt hostility to Spain, such an appropriation could not be hostile when Spain, whether by protocol or treaty, had relinquished the vessel and had agreed to take no steps to recover it. At the time when the appropriation of these vessels was made not merely had hostilities ceased, but the American occupation of

the place where the vessels lay had been agreed to by Spain. Hence the appropriation was a perfectly peaceful act as regards Spain, and it could not render the vessels prize of *war* for the benefit of the captors.

Moreover, the raising of these vessels, the event which was essential to their being subject to adjudication as prizes, took place after the arrival of the army had made it impossible for the navy to take prizes in Manila Bay. Conceding, for the sake of the argument, that a vessel need not be made prize by the single act of capture, but that she may be made prize by a series of acts the final consummation of which takes place somewhat later, it is evident that such consummation can not have this effect if it occurs at a time when, or under circumstances under which, prizes can not be taken.

If, therefore, after the battle of Manila Bay the *Don Juan* and the two *Islas* were "sunk or otherwise destroyed" within the meaning of section 4635, neither the subsequent raising nor the appropriation to the use of the Government can have changed their status or have made them prize.

In determining whether these vessels were "sunk or otherwise destroyed" considerable aid will be got by observing the recent decisions under section 4635, the course pursued by the libellant in regard to these vessels, the understanding of the Navy Department, the actual condition of the vessels themselves, and the work which was done upon them.

Recent decisions under section 4635.

In *Dewey* v. *United States* (178 U. S., 510; 35 C. Cls. R., 172) the Court of Claims in applying this statute held that the following vessels were "destroyed by the vessels of war of the United States: *Reina Cristina*, *Castilla*, *Don Juan de Ulloa*, *General Lezo*, *Marques del Duero*, *Argos*, *Velasco*, and *Isla de Mindanao*, and two torpedo boats," and accordingly judgment was rendered for the amount due under section 4635 on account of all these vessels. It appears from Admiral Dewey's illustrated report (Appx., 69), which was a part of the evidence upon which the Court of Claims based its judgment, and which was not controverted in any way and is a part of the record in the present case, that very considerable portions of the *Reina Cristina*, *Castilla*, *Don Juan de Ulloa*, *Velasco*, and *Isla de Mindanao* remained above water, evidently accessible and capable of being removed. Moreover, there is undisputed testimony to the effect that, as a mechanical problem, everyone of those vessels could have been raised, although their raising and reconstruction would have cost more than in the case of the *Don Juan* and the two *Islas* (Rec., 60).

In *Sampson* v. *United States* (35 C. Cls. R., 578) the Court of Claims found that "the *Vizcaya*, *Almirante Oquendo*, *Cristobal Colon*, *Pluton*, and *Furor* were destroyed," and judgment for the amount due under section 4635, on account of all these vessels, was thereupon rendered. It appears from the "Report of the Board on Condition of Spanish Vessels Sunk or

Destroyed" (Appx., 573), which was a part of the evidence upon which the Court of Claims reached its conclusion, and which was uncontradicted, and especially from the photographs annexed to the report, that very considerable portions of the *Vizcaya* and *Oquendo* remained above water, evidently accessible and capable of being removed. The board recommended that these vessels should be stripped and the guns and other salvable property taken from them. The same board reported that the *Colon* could probably be raised, and an attempt to raise her was carried on for several weeks, but finally abandoned. (Appx., 591, 597–600.)

From the action of the Court of Claims in these two cases it is evident that the word "destroyed" was not held to mean totally destroyed or annihilated. A destroyed vessel, according to the view of that court, might have a great deal of its structure still remaining and might still contain guns and other articles of value. From all this it is evident that a vessel may be "sunk or otherwise destroyed," within the meaning of section 4635, although still capable of being raised and floated, or although an attempt to raise her has been carried on for some time, but finally abandoned, or although, while she can not be floated, a large part of her may still remain capable of being removed. The conclusion to be drawn is that the words "sunk or otherwise destroyed" are equivalent to "rendered incapable of service as a vessel of war without extensive reconstruction," and also "rendered incapable of being

floated by ordinary means such as a naval force is provided with." Thus, if a vessel lies on the bottom in shallow water, but so placed or in such a condition that she can not be floated by any of the means ordinarily possessed by a naval force, such vessel must be regarded as "sunk" within the meaning of the statute, even though she has received no structural injury; or if a vessel, though not sunk, be so structurally injured as to destroy her power of floating, and she can not be repaired by any means possessed by the naval force in the place where she lies, such vessel must be regarded as constructively or legally "destroyed" within the meaning of the statute, even though substantially all the material of the vessel may remain.

A rather striking analogy is furnished by the cases of constructive total loss of a vessel, such as justifies an abandonment to the underwriters. One difference between those cases and cases under section 4635 is that in the former the owner of the vessel need not abandon it unless he see fit to do so, whereas under section 4635 there would seem to be no right of election, on the part of the captors, as to whether the vessel shall be treated as destroyed or as a prize; and another difference is that the owner of a submerged or stranded vessel could contract with a third party to raise it, which captors apparently could not do; but in most other respects the analogy would seem to be close.

It is an established rule in this country that if a vessel has been injured by any of the perils insured against, to such an extent that the cost of repairs would

be more than 50 per cent of her value, the owner may abandon her and claim a total loss. (*Peters* v. *Phœnix Ins. Co.*, 3 Serg. & R. Pa., 25; 3 Kent's Comm., 14th ed., 329.)

If a vessel be no longer afloat, however, and can not readily be made afloat, the owner may abandon her even if the cost of floating and repairing her would not necessarily be 50 per cent of her value. This point was very elaborately discussed in *Peele* v. *Merchants Ins. Co.* (3 Mas., 27). In that case an abandoned vessel had been floated and repaired by the insurers, for less than half her value, but it was held that the abandonment was valid, so that the insurers could not require the owners to take the vessel back, but were liable on the policy. The conclusion to be drawn from the authorities was summed up by Story, J., as follows:

> The right of abandonment has been admitted to exist where there is a forcible dispossession or ouster of the owner of the ship, as in cases of capture; where there is a moral restraint or detention which deprives the owner of the free use of the ship, as in case of embargoes, blockades, and arrests by sovereign authority; where there is a *present total loss of the physical possession and use of the ship*, as in case of submersion; where there is a total loss of the ship for the voyage, as in case of shipwreck, so that the ship can not be repaired for the voyage in the port where the disaster happens; and, lastly, where the injury is so extensive that, by reason of it, the ship is useless, and yet the necessary repairs would exceed her present value. None

> of these cases will, I imagine, be disputed. If there be any general principle that pervades and governs them, it seems to be this: That the right to abandon exists *whenever, from the circumstances of the case, the ship, for all useful purposes of a ship for the voyage, is, for the present, gone from the control of the owner, and the time when she will be restored to him in a state to resume the voyage is uncertain or unreasonably distant*, or the risk and expense are disproportioned to the expected benefits of the voyage. In such a case the law deems the ship, though having a physical existence, as ceasing to exist for the purposes of utility, and therefore subjects her to be treated as lost.

In *Bradlie* v. *Maryland Ins. Co.* (12 Pet., 378, 398) the same learned jurist said:

> In many cases of stranding the state of the vessel at the time may be such, from the imminency of the peril and the apparent amount of expenditures required to deliver her from it, as to justify an abandonment, although by some fortunate occurrence she may be delivered from her peril without an actual expenditure of one-half of her value when she is in safety. * * * Mr. Chancellor Kent, in his learned Commentaries, vol. 3, 321, has laid down the true results of the doctrine on this subject. "The right of abandonment," says he, "does not depend upon the certainty, but upon the high probability of a total loss, either of the property or of the voyage, or both. The insured is to act, not upon certainties, but upon probabilities; and if the facts present a case of

> extreme hazard and of probable expense exceeding half the value of the ship, the insured may abandon, though it may happen that she was afterwards recovered at a less expense."

It was also held in the cases just cited that if the abandonment, when made, is good, the rights of the parties are definitely fixed, and do not become changed by any subsequent events.

The American doctrine of constructive total loss is perfectly reasonable, especially in view of the fact that the recovery of a submerged or stranded vessel is always a matter of uncertainty. It is scarcely possible to estimate the cost beforehand, and it is greatly affected by conditions of weather, which may cause expensive delays, even if they do not render success impossible. This doctrine is just as reasonable when applied to modern steel ships as to the wooden vessels of Mr. Justice Story's time, for though the former are much the stronger, they are many times larger and heavier than the latter, and the work of floating them involves very elaborate and costly operations. The analogy to cases of "destroyed" vessels under section 4635 is at least very suggestive as to the point that a vessel may be constructively "sunk or otherwise destroyed" when she can not be raised and reconstructed or repaired without the expenditure of considerable time and money.

The course pursued by the libellant in regard to these vessels.

At the close of the battle of Manila Bay the Spaniards sank in shallow water all of their vessels which

had remained afloat, except the *Manila* and a few small gunboats. Later on the same day the *Don Juan*, the two *Islas*, and some other vessels were set on fire by the libellant's orders, and all the combustible portions of them which were out of the water were burnt. The official reports contain the following statements:

> Immediately engaged enemy and destroyed the following Spanish vessels: *Reina Cristina*, *Castilla*, *Don Antonio de Ulloa*, *Don Juan de Austria*, *Isla de Luzon*, *Isla de Cuba*, *General Lezo*, *Marques del Duero*, *El Correo*, *Velasco*, one transport, *Isla de Mindanao*. (Dewey's dispatch of May 1, 1898, Appx., 68.)
>
> The following is a correct list of Spanish vessels destroyed May 1: Two protected cruisers, *Isla de Cuba*, *Isla de Luzon;* five unprotected cruisers, *Reina Cristina*, *Castilla*, *Don Antonio de Ulloa*, *Don Juan de Austria*, *Velasco;* two gunboats, *General Lezo*, *Marques del Duero;* one transport, *Isla de Mindanao;* one surveying vessel, *Argos*, both armed. The following have been captured: One transport, *Manila;* one gunboat, *Callao*. (Dewey's dispatch of June 12, 1898, Appx., 69.)
>
> The Spanish lost the following vessels:
>
> Sunk: *Reina Cristina*, *Castilla*, *Don Antonio de Ulloa*. Burnt: *Don Juan de Austria*, *Isla de Luzon*, *Isla de Cuba*, *General Lezo*, *Marques del Duero*, *El Correo*, *Velasco*, and *Isla de Mindanao* (transport). Captured: *Rapido* and *Hercules* (tugs), and several small launches. (Dewey's report of May 4, 1898. Appx., 71.)
>
> In obedience to a signal from flagship to destroy all shipping in the harbor, Lieutenant

> Hughes was sent ashore with a whaleboat's crew of 7 men * * * and set fire to the *Don Juan de Austria*, *Isla de Cuba*, *Isla de Luzon*, *General Lezo*, and *Marques del Duero*. * * * The *Isla de Cuba*, *Isla de Luzon*, and *Don Juan de Austria* were aground and full of water when they were fired. Their outboard valves were opened and the ships allowed to fill. * * * During the night the magazines of the *Don Juan de Austria* blew up. (Wood's Report of May 4, 1898, Appx., 81.)
>
> There remained the last recourse—to sink our vessels, and we accomplished this operation. * * * (Spanish official report, Appx., 92).
>
> At daybreak on May 1, engaged the Spanish squadron at Cavite, and the shore batteries at Cavite and Manila, the engagement resulting in the destruction of the Spanish squadron and the capture of the Cavite batteries and naval arsenal, with the armed transport *Manila*, and numerous small vessels and tugs. (Dewey's report of September 19, 1898, Appx., 127.)

It is clear from the above reports that the Spaniards succeeded in sinking the *Don Juan de Austria*, *Isla de Cuba*, and *Isla de Luzon* as far as the depth of water would permit, and that the libellant, immediately after the battle, undertook to destroy these vessels by fire, as far as their partially submerged condition made such destruction possible, precisely as he did in the case of the *General Lezo* and the *Marques del Duero;* and it is also clear from the reports that the libellant has officially stated that the *Don Juan de Austria*, *Isla de Cuba*, and *Isla de Luzon* were "destroyed," as well as other vessels

which have been judicially determined to have been in that category, and that he has in the same reports distinguished them from other vessels which were "captured." The latest report, dated September 19, 1898, is particularly significant, as at that date Constructor Capps was actually making, or perhaps had even concluded, his inspection of these "destroyed" vessels, with a view to raising as many of them as possible.

The official acts and reports of the libellant are most significant as showing that even as late as September 19, 1898, he regarded these vessels as "destroyed," and not as prizes. His course, even at a later period, when the vessels were being raised, and in fact down to July 13, 1899, when the libellant's petition in the suit for bounty was filed in the Court of Claims, manifests the same understanding on his part, and is especially significant when contrasted with his course in regard to the greater part of the other property to which the libel relates. The libel asserts that all the property as to which adjudication is sought was appropriated to the use of the United States. All cases of such appropriation are provided for by statute, as follows:

> SEC. 4624. Whenever any captured vessel, arms, munitions, or other material are taken for the use of the United States before it comes into the custody of the prize court, it shall be surveyed, appraised, and inventoried by persons as competent and impartial as can be obtained, and the survey, appraisement, and inventory shall be sent to the court in which proceedings

> are to be had; and if taken afterwards, sufficient notice shall first be given to enable the court to have the property appraised for the protection of the rights of the claimants and captors. In all cases of prize property taken for or appropriated to the use of the Government, the department for whose use it is taken or appropriated shall deposit the value thereof with the assistant treasurer of the United States nearest to the place of the session of the court, subject to the order of the court in the cause.

In the case of the *Manila*, *Barcelo*, and other vessels which are conceded to have been taken as prize, this section was strictly complied with by the captors. They did not do this immediately after the battle, manifestly because their time was fully taken up with more important matters. They had to attend to all the countless administrative and military details which the occupation of hostile territory involves. After a month, however, when they had established themselves at Cavite and could pause to take breath, the libellant issued a formal order, as follows:

> UNITED STATES NAVAL FORCE
> ON ASIATIC STATION,
> FLAGSHIP OLYMPIA,
> *Cavite, P. I., June 4, 1898.*
>
> SIR: 1. A board is hereby ordered for the purpose of surveying, appraising, and taking a careful inventory of the enemy's property captured and appropriated for the uses of the United States Government by the squadron under my command, in Manila Bay, since

April 30th, 1898, in accordance with section 4624 et seq., United States Revised Statutes.

2. The board will convene on Monday, June 6th, at 10 a. m., or as soon thereafter as practicable, on board the U. S. S. *Raleigh*.

3. The report of the board will be made in duplicate.

4. The board will be composed of yourself as senior member and of Commander E. P. Wood, U. S. Navy, and Lieutenant Carlos G. Calkins, U. S. Navy, members.

5. Passed Assistant Paymaster S. L. Heap, U. S. Navy, will act as recorder.

Very respectfully,

GEORGE DEWEY,
Rear Admiral, U. S. Navy,
Commanding U. S. Naval Force
on Asiatic Station.

Captain J. B. COGHLAN, U. S. Navy,
Commanding U. S. S. Raleigh, Cavite, P. I.

(Rec., 113.)

The report of this board covered all the property which had, up to that time, been appropriated to the use of the United States, whether captured afloat or ashore. In the absence of any authoritative decision under the statutes then in force as to whether property captured ashore was prize or not, the action of the captors, in including such property in their appraisement, was reasonable enough, and it is significant as showing their intention not to forego any of their rights. They appraised all the property which the United States had appropriated and in which they

claimed prize rights, whether all of their rights might be legally sustainable or not. They had no intention of letting the United States appropriate any property which even *might* be lawful prize, without taking all the steps requisite for the effective assertion of their own legal rights in such property, whatever those rights might be.

When the Government appropriated the *Don Juan* and the two *Islas*, however, the course of action was far different. The libellant issued no orders for a survey and appraisement under section 4624, and the Government's contractors removed the vessels (such removal being an undoubted act of appropriation) without any steps having been taken under that section whatever. This clearly indicates (especially in view of the course pursued as to the other property) that all parties considered at that time that these vessels were "destroyed," as the libellant had repeatedly (and as late as September 19, 1898) reported them to be, and that in having them removed the Government was merely dealing with property which already belonged to it, *jure republicæ*.

It has been stated above that the libellant contends that these three vessels are prize by virtue of sections 4615 and 4624, having been "appropriated for the use of the Government" as prizes "not in condition to be sent in for adjudication." As a matter of fact, not merely was the appropriation made without any reference to section 4624, but the vessels, when appropriated, were in condition to be sent in for adjudication. If

these vessels were appropriated as prizes at all, such appropriation could not have taken place until the vessels were raised and floated, for if the attempt to raise them had for any reason been abandoned they would have been "sunk or otherwise destroyed" and not prizes, as in the case of the *Cristobal Colon*. (*Sampson* v. *United States*, *supra*.) When, however, the vessels were raised and the appropriation as prize, if such it was, took place, the vessels were no longer "not in condition to be sent in for adjudication," as they were in condition to go to Hongkong, and could there have been repaired sufficiently to enable them to reach an American port. Hence, whether they were appropriated under section 4624 or not, they were certainly not appropriated under section 4615, and that section may be disregarded. The only question is, Were they prizes at the close of the battle, without regard to what took place afterwards?

In view of the present contention that the *Don Juan* and the two *Islas* were prizes, it is certainly most peculiar that until more than fourteen months after the battle of Manila Bay absolutely nothing seems to have been said or done by anyone to indicate a belief that such was the status of these vessels. On the contrary, until about that time everything that had been said or done in regard to them was precisely what would have been said or done if they had been "sunk or otherwise destroyed." Thus—

(*a*) The libellant himself burned these vessels, in order to prevent the Spaniards from making use of them.

(*b*) The libellant himself in his official reports repeatedly referred to these vessels as "destroyed," distinguishing them from others which he reported as "captured."

(*c*) The alleged captors asserted no rights in these vessels as captors until about July 13, 1899, long after hostilities had ceased, and long after the vessels themselves were in the possession of the Navy Department.

(*d*) After the close of the battle the alleged captors never at any time did anything themselves to any of these vessels to make it possible to treat them as prizes.

(*e*) The physical condition and situation of these vessels remained unchanged until after hostilities ceased.

(*f*) The Government did nothing to these vessels which it did not have a perfect right to do, without liability to account for the value of the vessels, if, as a matter of fact, they were not prizes.

(*g*) The alleged captors did not comply with the requirements of section 4615 in regard to the duties of captors of prizes "not in condition to be sent in for adjudication."

The understanding of the Navy Department.

The understanding of the Navy Department is also of some importance in this connection. The *Don Juan* and the two *Islas* were not raised and reconstructed as a matter of sentiment, but in order to provide useful fighting machines on reasonable terms. As regards the officers and men of the Navy, the retention of captured vessels may, as a matter of setiment and *esprit de corps*, be of great importance; but the Bureau of

Construction and Repair is a purely business Bureau, charged with very practical duties, and the defense of the nation and the safety of its naval officers and men demand that this Bureau should be ruled by practical considerations only, not by sentiment. It is in evidence that the authorities of the Navy Department took a purely practical view of the expediency of raising these very vessels, and "authority was given to raise and fit out these vessels if it could be done at a cost not exceeding 50 per cent of the cost of a new vessel of that kind," manifestly for the reason stated by Constructor Capps, viz: "that the type is an old one, and when raised and fitted out they would not be nearly as efficient as vessels designed at the present time would be." (Rec., 61.) It is perfectly clear that the Secretary of the Navy, in giving this authority, had no idea of paying prize money in addition, not merely because it was not worth while to spend more than 50 per cent on vessels of an old type, but also because if prize money was to be paid there would have been no motive in the restriction to 50 per cent, or in any restriction short of the total value of the vessel when raised, reconstructed and refitted; for whatever the excess of the value of the vessel when ready to be put in commission, over the cost of raising, etc., it would, if the vessel were a prize, have to be paid by the Navy Department, half to the captors and half to the navy pension fund. The greater the cost of raising, etc., the less would be the prize money, but the Department would have had to pay the total value

of the vessel just the same, whether the cost of raising, etc., were little or much. It would make no difference to the Department whether it paid 50 per cent for raising, reconstruction, etc., and 50 per cent as prize money, or whether it paid 100 per cent for work on the vessel and nothing as prize money. The fact that the Department did not authorize the raising and reconstruction of any vessels at a greater cost than 50 per cent of the cost of a new vessel of the kind is therefore conclusive evidence that the Secretary did not understand that there would be any claim for prize money, and his belief was obviously based upon the fact that these vessels were officially reported by the libellant as "destroyed," and were not claimed as even potential prizes.

The condition of the vessels and the work done upon them.

The condition of the vessels, all three of which were resting on the bottom and full of water, appears to have been as follows:

Isla de Cuba: Steel gunboat, 1,030 tons; forward end of main deck about 3 feet out of water and after end about 2 feet below water at low tide; upper works more or less damaged by fire.

Isla de Luzon: Steel gunboat, 1,030 tons; forward end of main deck about 1 foot below water and after end about 4 feet above water at low tide; upper works more or less damaged by fire.

Don Juan de Austria: Iron gunboat, 1,130 tons; forward end of main deck about 3 feet above water

and the after end about 3 feet below water at low tide; upper works badly damaged by fire. (Rec., 134.)

The vessels remained in this condition until October 29, 1898, when the Hongkong and Whampoa Dock Company, under a contract, began the work of raising them, which work was conducted as follows:

> Raising the *Isla de Cuba:* Vessel down by the stern, with main deck about 3 feet out of water forward, and about 2 feet under water aft. Soundings only 8 to 10 feet at low tide. Expedition arrived at Cavite October 29, and the same day began work on the *Isla de Cuba.* Divers were sent down to stop openings in hull. Bulwarks were built up with 12-inch planking so that the top would be above water at high tide. Three centrifugal pumps were mounted on board—a 6-inch forward over hatch under forecastle, a 10-inch amidships over engine-room hatch, and a 12-inch after, over wardroom hatch. Pumps were started November 3, steam being supplied by the tug *Este*, by permission of the commander in chief. Though pumping well down on the 4th, the vessel did not budge, apparently held by the suction of the mud. Soundings of 8 to 12 feet, with the water just above the main deck, showed the vessel to be deeply imbedded in the mud. With the assistance of divers, bamboo poles and planks were driven down along the ship's sides and worked to admit water beneath the vessel. Finally, at 2.30 p. m. on the 5th, the vessel lifted.
>
> Upon effort being made to haul the vessel out astern, she struck on the bank of her mud

bed after moving about 40 feet. The next day she was hauled out about 40 feet farther, cutting her way, as it were, with the rise and fall of tide. Finally, on the 7th of November, she was gotten completely off. On the 15th she was towed to the slip.

Raising the *Isla de Luzon:* Vessel down by the head, with main deck about 1 foot below water forward and 4 feet above water aft. Soundings, 12 to 15 feet. Carpenters were sent ahead from the *Isla de Cuba* on November 1, to start on the *Isla de Luzon*, and the 6 and 10 inch centrifugal pumps were shifted from the former to the latter on the 6th. When the *Isla de Cuba* was finally raised and clear, the wrecking force was concentrated on the *Isla de Luzon.* The work was interrupted, however, from the 9th till the 14th by a typhoon, during which, on the 12th, it was deemed advisable to flood the *Isla de Cuba* aft to sink her sufficiently to bear well on the bottom. The openings being closed, pumping out the *Isla de Luzon* began on the 15th, and the vessel floated at 3.30 p. m. of the same day, a duplex donkey pump having been installed over the ward-room hatch in addition to the two pumps, 6 and 10 inch centrifugal, referred to above. The stern, however, was held by the old wreck with which it was entangled, and not until the 19th was the vessel finally gotten clear, and the next day she was towed to the slip.

Raising the *Don Juan de Austria:* Vessel down by the stern with main deck about 3 feet above water forward and about 3 feet below water aft. Soundings, 14 to 15 feet.

> On the 1st of November several workmen were sent ahead to close the gangways and other openings. On the 22d the pumps were shifted from the *Isla de Cuba* and *Isla de Luzon*, the 6-inch being put forward, the 12-inch amidship, and the 10-inch aft. Started pumping early the 23d, and the vessel was afloat at 11.30 a. m. of the same day. She continued to make water, but the pumps kept it under control, and the next day she was towed to the slip. (Rec., 135–136.)

All the openings in the hulls were then closed, and the engines and boilers were cleaned and overhauled for the trip to Hongkong, for which port the *Isla de Cuba* and *Isla de Luzon* started on December 19, 1898, and the *Don Juan de Austria* on January 16, 1899. They arrived safely, and were then thoroughly reconstructed and refitted, the work being finished in the latter part of 1899. The cost of raising, taking to Hongkong, and reconstructing was about $304,000, very nearly half of the total estimated value of the vessels when again fit for service.

Bearing in mind the meaning which the words of section 4635 evidently had, as first used in the act of July 17, 1862, the recent decision in cases arising under this section, and the analogy suggested by the doctrine of constructive total loss, the conclusion would seem to follow that the *Don Juan* and the two *Islas* were, in consequence of the acts of the Spaniards and the libellant himself, "sunk or otherwise destroyed," within the meaning of section 4635. The

libellant's own acts are of some importance in this connection. Although prior to adjudication the rights of captors are inchoate only, and not absolute, yet the prize statutes evidently contemplate that these inchoate rights should begin at the time of the capture, and should exist without interruption from that time until adjudication is had. In the present case it is clear the *Don Juan de Austria*, *Isla de Cuba*, and *Isla de Luzon* were not held as prizes at the close of the battle, for all that the libellant then did was to set fire to these vessels and to destroy them by fire as far as he could, an act wholly at variance with any intention of holding them as prizes. Moreover, the fact that the libellant himself, as already shown, officially reported several times that these vessels were "destroyed," and distinguished them from "captured" vessels, and the further fact that he had an appraisal made of appropriated property which he claimed to have captured as prize, but not of these vessels, are, it is submitted, very good evidence that the words of section 4635, "sunk or otherwise destroyed," really mean, in naval usage, that the vessels can not be made to float by any means within the power of the naval force which has come into control of such vessels.

When the words "sunk or otherwise destroyed" were adopted by Congress in providing for naval bounty, they were presumably understood as having a recognized meaning among seafaring men, and there can be no higher authority than the libellant as to what that meaning is. When he officially reported

that the vessels in question were "destroyed," he knew precisely what he meant and what the Navy Department would understand him to mean, viz, that the vessels were not in a condition to be made prize, and that their destruction was such as would entitle the libellant and his naval force to bounty under section 4635. It does not now appear whether the libellant believed at the time that these vessels would utimately be raised by the Government and reconstructed for use in the Navy or not. If he did not believe it, though knowing, as of course he did, the intense desire of all patriotic naval officers to see in their own navy vessels which had once belonged to the enemy, then he must have considered these vessels as totally destroyed, and he could not have regarded them as prizes. If, on the other hand, he expected that as soon as possible every effort would be made to raise such of these "destroyed" vessels as were capable of being repaired and added to the United States Navy, then his reference to all the vessels which did not remain afloat as "sunk" or "destroyed" is even more forcible, as showing that those words were understood, in a somewhat technical sense, as meaning an actual but not necessarily perpetual condition. In either case, it is submitted, the libellant reported these vessels as "sunk" or "destroyed" because it was the most natural way of describing their condition, and any other naval officer, or even any other intelligent man, would have done the same, because all these vessels were actually "sunk or otherwise destroyed" at that

time, whatever became of them subsequently. The evidence, both of what was done and of what was reported, is, therefore, wholly on the side of that construction of section 4635 for which the United States now contends.

As a matter of fact, these three vessels were, in a very real sense, "sunk or otherwise destroyed" at the close of the engagement on May 1, 1898, and they remained so for six months thereafter. It can not be doubted but that if the libellant had within that period begun proceedings to recover bounty under section 4635 on account of these vessels, he would have been entitled to receive it. He and the force under his command were themselves utterly unable to raise the vessels, and as captors they had no right to contract with outside parties for the work of raising. The difference between these wrecks and the others was not one of kind, but merely of degree, in that it cost less to raise and repair them than it would have done in the case of the others, so that the Navy Department was willing to undertake the cost of the work. The mere fact that the Navy Department finally undertook this cost, and had the work done, can not have changed the legal status of these vessels or the legal rights of the libellant and his naval force from what they had been during the six months succeeding the engagement. The vessels were "sunk or otherwise destroyed" on May 1, 1898, and their status at that date fixes the libellant's rights.

The learned judge of the court below rejected this conclusion, however, saying:

> It is true that they were sunk and that efforts were made to destroy them by burning, but the burning was only partial, because the vessels were submerged, and the sinking was only temporary and not beyond recovery. That they were raised and repaired and are now in the service of the United States are facts that seem to prove that they were not destroyed but captured. (Rec., 150.)

The essential fact, in the eyes of the learned judge, was that these vessels were, as a matter of fact, raised; but that fact merely means that the United States chose to raise these vessels, and did not choose to raise the others. His view was that if the United States chooses to raise an enemy's sunken vessel of war, and succeeds in so doing, such vessel is not a sunken vessel within the meaning of section 4635. In other words, if the United States leaves a sunken vessel alone, she remains a sunken vessel within that section, but if it raises her she becomes, in consequence of being raised, a prize. The criterion, as between a capture under section 4615 and a sunken vessel under section 4635, is, under this view, simply whether the United States sees fit to raise the vessel or not. The court's view is not that the vessel is not sunken within the meaning of section 4635 if she can be raised and floated, nor is it that a vessel is not destroyed if any part of it remain, for the evidence in this case shows that every one of the vessels for

which this same libellant has recovered bounty under section 4635 could have been raised and repaired, some of them certainly for less than the cost of new vessels of their type. Naval Constructor Capps testified as follows:

> 41. Question. Did you make any inspection of the other Spanish vessels which were sunk in the same engagement?
>
> Answer. I did.
>
> 42. Question. Of all of them?
>
> Answer. Yes.
>
> 43. Question. Could any of them have been raised, in your opinion?
>
> Answer. Yes; several of them, but not with advantage.
>
> 44. Question. Which vessels could, in your opinion, have been raised?
>
> Answer. As a mechanical problem, all of them, without considering advantage or disadvantage.
>
> 45. Question. When you say they could not have been raised with advantage, do you mean that in every instance the cost of raising would have been greater than the value of the vessel when raised?
>
> Answer. I mean that the cost of raising and fitting out would have been too much to have justified fitting out that type of vessel. * * * It was known that the engines of the *Velasco* and *Don Antonio de Ulloa* were dismantled, the vessels themselves being at anchor. The *Castilla* was a wooden ship and a total wreck, and her magazines had also exploded. The *Reina Cristina* received the concentrated fire of the

fleet and suffered an unusual amount of damage; her hull was completely burned out fore and aft, and her magazines had exploded, besides having her engines disabled before the action was over. The small gunboats which were in the action suffered explosions of their magazines after being burned and partially sunk.

46. Question. The cost of raising and fitting out would have differed considerable with these different vessels, would it not?

Answer. Yes; not the three which were saved, but the others.

47. Question. As a general rule in such cases, what proportion should the cost of raising and fitting out bear to the value of the vessel when raised and fitted out to enable you to say that the undertaking was done with advantage?

Answer. It would be very hard to fix a general proportion, but the actual facts in this case were that recommendations were made to the Navy Department and that authority was given to raise and fit out these vessels if it could be done at a cost not exceeding 50 per cent of the cost of a new vessel of that kind.

48. Question. And no such recommendation was made in the case of the other vessels?

Answer. No; because it was believed that the cost of raising and fitting out would be nowhere near 50 per cent of the cost of a new vessel—would be very much in excess.

49. Question. Should you say that if the cost of raising and fitting out were 75 per cent of the cost of a new vessel it would be worth while to raise and fit out the sunken vessels?

Answer. Does this apply to other vessels or to those three vessels?

50. Question. My question refers to sunken vessels of whatever type, such as those which were sunk at Manila.

Answer. Generally speaking, I would by no means recommend the raising and fitting out of large numbers of vessels, if they were available, of the type found at Manila Bay, at a cost of 75 per cent of the cost of new vessels, because the type is an old one, and when raised and fitted out they would not be nearly as efficient as vessels designed at the present time would be.

51. Question. Leaving out of consideration the possibly antiquated type of some of these vessels, were there any of them which might in your opinion have been raised and fitted out for a cost of 75 per cent or less of their value?

Answer. I doubt it. Certainly not in the case of the *Cristina* or *Castilla*, and in the case of the *Ulloa* and *Velasco* it was definitely known that the machinery was dismantled and the boilers not in place.

52. Question. It is probable, though, is it not, that some of these vessels could have been raised and fitted out for less than the cost of a new vessel of that type?

Answer. Yes.

53. Question. It is practically certain that such could have been done?

Answer. Yes. (Rec., 60–61.)

In this connection it is to be observed that as late as July 25, 1899, Naval Constructor Hobson recom-

mended that the *Ulloa* and *Velasco* should be raised and repaired, or at least one of them. (Rec., 142.)

In view of this testimony it is clear that what the court below holds as the essential fact which shows that these vessels were captured as prize, and not "sunk or otherwise destroyed," is not that they were capable of being raised, a condition which existed at the close of the battle, but that they were actually raised, a condition which did not exist until six months afterwards. In other words, the court below holds that these vessels were captured as prize on May 1, 1898, because they were raised in November, 1898; but it is evident that until they were raised the captors could not have filed a libel against them, and that in the meantime bounty could have been recovered for them as "sunk or otherwise destroyed," so that until they were actually raised their status could not have been that of vessels captured as prize, but must have been that of vessels "sunk or otherwise destroyed." It is submitted that the statutes contemplate no such change of status.

Moreover, on the theory of the court below, the question of whether a vessel is a prize or a sunken vessel is not a legal question, to be determined by the status of the vessel at the close of the engagement, but purely one of administrative economy, to be settled by the Navy Department according to its views of what is the best policy. In 1898 the head of that Department decided (so the learned judge practically said) that if a vessel could be raised and refitted for

not over 50 per cent of the cost of a new vessel, it would be a prize under section 4615, but that if it would cost more than that, then the vessel would be a sunken vessel under section 4635. Another Department chief might have taken a different view, and some, at least, of the vessels now conceded to be sunken might have been prizes, or some of these alleged prizes might have remained sunken.

It is submitted that Congress intended that it, and not the Secretary of the Navy, should decide what should be prizes and what sunken vessels, and that the only way by which Congress, expressing its will in the statutes which it has enacted, can decide the matter is by considering the condition of the vessels at the close of the battle, whether the Secretary of the Navy may afterwards see fit to change that condition or not. If the matter be, as it should be, decided by the statutes, then the only practical criterion as to whether a vessel of war is the subject of prize proceedings or of bounty must be her capability of being at once sent to a prize court for adjudication. If she is afloat, or if, having run aground, she can readily be floated by her captors, she may be treated as a prize; but if she has sunk so that she can only be floated as the result of wrecking operations not contemplated by the prize statutes, and carried on by a third party, then, whatever may ultimately be done with her, she is the subject of bounty only, just as if she were irrevocably sunk or an absolutely valueless wreck.

Discussion of the construction adopted by the court below.

The court below treated section 4635 as if it read as follows:

> A bounty shall be paid by the United States for each person on board any ship or vessel of war belonging to the enemy at the commencement of an engagement, which is sunk or otherwise destroyed in such engagement by any ship or vessel belonging to the United States, unless the Secretary of the Navy shall at any time thereafter see fit to raise or reconstruct such enemy's vessel of war, in which case she shall be deemed and taken to have been captured as a prize.

There is not the slightest intimation in this section, as enacted, or in any of the sections under the title of prize, of any such qualification, or of any intention to allow the Secretary of the Navy any say whatever in the question of whether a vessel shall be a prize or not, or to make the determination of the status of the vessel as a prize or a sunken vessel in any way dependent upon the action of the Secretary of the Navy.

Unless the capacity of a vessel of war to remain afloat be the criterion as between prize and bounty, then the only possible criterion is her capability of being sold, for, under section 4615, if a captured vessel can not be sent to a prize court, the only prize money recoverable on account of her is from the proceeds of a sale of her, either to the Government on appraisement or to other parties. This, however, would be either a most unfair or a very uncertain criterion. If it were

possible to apply it rigidly in every case, then it would often operate unfairly, for as long as the vessel or what remained of it would sell for anything at all—no matter how little—then it would have to be sold for what it would bring, even though the proceeds might amount to very much less than the bounty money. It is in evidence that the other wrecks, for which a judgment for bounty has been entered in favor of the libellant and his officers and men, were advertised for sale, but that no bids were received, apparently because the United States had not a complete title to the territory. (Rec., 62.) On the theory of the court below, if political conditions had been more stable and the wrecks had sold for any sum at all—no matter how small—they would have been prizes under the concluding provision of section 4615, and the appellee would have been entitled to a share of the proceeds as prize money, instead of to the bounty. By the same theory if the Navy Department had decided (in deference to the traditional sentiment in favor of retaining captured vessels of war in the navy of the captor nation) to raise and repair some of the other wrecks, and the cost had equaled the total value of a new vessel, then the prize fund on account of such vessel would be nothing at all and the captors would be entitled to no bounty. Congress could never have intended such a result, and yet it is perfectly possible if the question of prize or bounty be left to be decided by the policy of the Navy Department and not by the statutes themselves. What Congress intended was that as the capture or sinking

of vessels of war was a matter of great importance there should always be a substantial bounty for such vessels, if prize money could not be recovered; and to this end it provided that when such a vessel was no longer afloat, bounty should be paid.

The court below has said that the bounty provided for by section 4635 "was not intended to be paid for mere temporary disablement that could be readily remedied." (Rec., 150.) That is true, but a vessel which requires (as all three of these vessels did) raising, reconstruction, and refitting, at a cost of very nearly half her value, when again ready for service, the work upon her taking a year or more to complete, can not be described as suffering from "mere temporary disablement that could be readily remedied." Apparently the court was impressed by Mr. Capps's statement that "the wrecking outfit consisted only of pumps, and the ordinary materials that you can get in any first-class ship chandler's establishment, and men. * * * Of the four pumps one was a 12-inch, two were 9-inch, and one 6-inch. The barges and derricks and apparatus of that kind were supplied from the resources of the navy-yard." (Rec., 59.) There is no evidence as to just what a "first-class ship chandler's establishment" is, but at all events the resources of the libellant's naval force did not include such an establishment. Moreover, the witness's statement does not seem to include the pumps as among the articles which could be got at a "first-class ship chandler's establishment," though the court below has evidently understood the

statement as putting both the pumps and the materials in the same category. The learned judge says, "The necessary pumps and ordinary materials to be found in any first-class ship chandler's establishment were not to be obtained at Manila Bay;" but the witness distinguished between the pumps and the "ordinary outfit of material in the way of oakum, felt, small tools, etc.," the latter being what he had previously referred to as the ordinary materials that you can get in any first-class ship chandler's establishment. At all events, it was necessary to get an outside party, the Hongkong and Whampoa Dock Company, to do the work of raising these ships, bringing them to Hongkong, and reconstructing them there; and if such outside resources had not been available the vessels would presumably have remained lying on the bottom until they had become no longer worth raising.

The only possible cause of difference between the status of the *Don Juan* and the two *Islas* and that of the *Ulloa*, *Velasco*, and other vessels for whose destruction bounty has been adjudged is that the former were raised and the latter were not. The latter were captured from the Spaniards just as completely as were the *Manila*, *Callao*, and other vessels that remained afloat. The mere fact that the *Ulloa*, *Velasco*, and others were wrecks did not make them any the less captures, for all control over them had passed from Spain to the United States, and the United States was entitled *jure reipublicæ* to deal with them as it might see fit. It has already been pointed out that where a

vessel is raised by a third party (in this case a foreign corporation) such raising can not make the vessel a prize or even help to make it such, because no vessel can be made a prize except by the unaided act of a naval force. (*The Siren*, 13 Wall., 389.) It has also been already pointed out that the appropriation of a captured vessel by the United States can not make it a prize, and *a fortiori* that the raising and appropriation of a vessel after hostilities cease can have no effect upon its status.

The raising and appropriation of these vessels not having changed their status as regards the libelant's rights, those rights must remain what they were at the time they came into existence, i. e., as soon as the vessels had been sunk and burnt. These vessels, like the *Ulloa*, *Velasco*, and others, being "sunk or otherwise destroyed," were simply property captured from the enemy, but not prize. They were in the same status as vessels captured by a conjoint military and naval expedition. The Government was entitled to the exclusive possession of them, and it took advantage of this right. It did not appropriate them under section 4624, but appropriated them *jure reipublicæ*. The libellant and his officers and men are entitled to a judgment in the Court of Claims for bounty on account of these vessels, but not to prize money.

The court below made, however, the following suggestion:

> Suppose that this historic battle had not resulted in more than the overwhelming of the

> Spanish fleet; that Cavite had remained in the possession of Spain, and that Spain had raised these vessels and restored them to her navy; could it be contended that they had been "sunk or otherwise destroyed" by the fleet under Admiral Dewey, and that he, his officers and men were entitled to bounty? (Rec., 150.)

This suggestion wholly overlooks the fact, already stated, that war is intended to be destructive, but not predatory. The loss to the enemy's fighting force is the same when a hostile vessel of war can no longer float as when a prize crew takes her to port for adjudication. In the present case the vessels were half destroyed, as far as concerns money value, for the cost of raising, reconstructing (the word "reconstruction" is used in Hobson's official report, Rec., 132), and refitting was just about half the total value of the vessels when again ready for service, but for the purposes of the war the fighting force of the enemy was reduced to the extent of these vessels just as completely as if they had been annihilated. They had ceased to be available for any purposes of warfare. It is true that if Manila Bay had not remained in the control of the United States these vessels might conceivably have been raised, reconstructed, and refitted by Spain; but this could not have been done during the period of the war, so that, for the purposes of the war, the injury to the enemy's fighting force would have been the same whether these vessels had afterwards been raised and reconstructed by Spain, or by the United States, or not at all.

The court below also called attention to the fact that in the appraisements by the Bureau of Supplies and Accounts, made November 1, 1899 (Rec., 129), these vessels are all referred to as captured Spanish vessels. As these appraisements were not made until after the present suit had been brought, it is hard to see how they can be relevant; but even if they were they do not state that these vessels were captured as prizes, but only that they were "captured," a statement which would have been equally true of the *Ulloa*, *Castilla*, or any of the other wrecks which were not raised.

It must be admitted that the case of *United States* v. *The Ram Albemarle* in the Supreme Court of the Dis- of Columbia (No. 146, Dist. Ct.) is against the view above set forth, to this extent, that a libel was filed against the *Albemarle* for the benefit of the captors, though she had been sunk on October 27, 1864, and had afterwards been raised. As the district attorney had assumed that the act of 1864 made such a vessel prize, the captors were, of course, only too glad to acquiesce in his view, the prize money coming to more than the bounty would have done, and so, all parties being agreed, the issue as to whether such a vessel was a prize or the subject of bounty was never raised, never tried, and never determined. The case of *United States* v. *Steever* (113 U. S., 747) was not brought under the general provisions of the prize statutes, but under a special jurisdictional act in which Congress had seen fit to treat the *Albemarle* as a prize, and the decision

did not relate to the status of the vessel, but to other matters connected with the claims for prize money.

In *Dewey* v. *United States* (178 U. S. 510), there was an analogous adverse precedent, stronger than that of the *Albemarle*, yet this court disregarded it. The issue was whether the word "force," under section 4635, Revised Statutes, meant an exclusively naval force or a naval force supported by land batteries. In *United States* v. *Farragut* (22 Wall., 406) the arbitrators had awarded prize money, under what is now section 4630, on the theory that the word "force" included land batteries, and although an appeal was taken it was voluntarily dismissed, as to the items affected by this ruling, before the argument, so that this court never passed on the point. When the point finally came before this court it had no difficulty in deciding that "force" meant naval force alone, in spite of the fact that a considerable sum had been paid to Admiral Farragut and his officers and crew on the other theory.

In view of the way in which this court treated the so-called precedent of the Farragut case, it is submitted that the *Albemarle* case should not be considered as in any sense a precedent. The truth is that the exploit of Cushing, like that of Farragut, meant so much in the prosecution of the civil war, and was regarded with such admiration, that no district attorney would ever have thought of weighing the words of statutes when there was an opportunity to reward those who had defended the nation when its life was at stake. Natural as that feeling was, it necessarily tended to prevent that close inquiry into the precise legal rights

of the parties, without which no judgment of a court can be of real value as a precedent. Moreover, it must not be forgotten that the *Albemarle* was raised in March, 1865, and reached Norfolk on April 27, 1865 (Naval Reb. Rec., ser. 1, vol. 12, pp. 9, 22, 75, 109, 128), while the civil war was still going on and while prize rights could still come into existence; whereas in the present case the three sunken vessels were not raised and appropriated until hostilities had ceased. This of itself constitutes a distinction between the cases.

2.

STATUS OF PROPERTY TAKEN FROM VESSELS SUNK OR OTHERWISE DESTROYED.

[See second assignment of error.]

As already stated, the record shows that some of the property libeled was taken from the three Spanish vessels which were raised and reconstructed, and from the vessels which were, indisputably, "sunk or otherwise destroyed." The money value of such property was undoubtedly much less than that of similar property libeled in the Sampson case, but, for the sake of uniformity and convenience, the whole argument on the law of the subject will be made in the present brief. The position of the Government is that the legal status of such property is the same as that of the vessel to which it belonged.

Section 4635, Revised Statutes, provides that "a bounty shall be paid by the United States for each person on board any ship or vessel of war belonging to an enemy at the commencement of an engagement,

which is sunk or otherwise destroyed in such engagement by any ship or vessel belonging to the United States." This grant of bounty is obviously "intended as a substitute for the prize itself" (*The Selma*, 1 Low., 30, 32), and is given "in lieu of" prize money (*Porter* v. *United States*, 106 U. S., 607.)

It would seem to be clear enough that bounty and prize money can not both be obtained on account of the same "ship or vessel of war," that such ship or vessel can not be both a "prize" under sections 4615–4634, and also "sunk or otherwise destroyed" under section 4635; and hence that the only possible question would be as to what constitutes a "ship or vessel of war" within the meaning of section 4635, i. e., whether that section relates only to the hull of the vessel, or relates also to whatever may be affixed to or on board of the vessel for the purposes for which it is used as a vessel of war.

It is submitted that except where a statute or other writing makes a plain distinction between the hull of a ship and the various articles which may be attached thereto or contained therein for the purposes for which the ship is employed, these latter articles are always understood as included in the term "ship" or "vessel.' Thus where Lord Stowell defined prize as "ships and cargoes taken by ships" (*Genoa and its Dependencies*, 2 Dods., 444) the term "ships" obviously included their whole equipment and outfit, everything attached to or on board of them which could not properly be described as cargo, for the equipment and outfit of a ship are

unquestionably prize, and Lord Stowell's definition was intended to be comprehensive.

The reason why Lord Stowell was content with so brief a definition of the two kinds of prize property as "ships" and "cargoes" was evidently because it had long been recognized that the term "ship," as used in courts of admiralty, included the tackle, sails, apparel, furniture, boats, and other appurtenances—everything in fact on or about a ship which could not be considered as cargo.

It is true that admiralty practice has never been wholly free from the verbosity and prolixity of expression which were formerly a marked characteristic of all legal proceedings, and still characterize them to some extent; and it is not surprising that those who drew up libels, writs, and other documents in regard to ships have rarely been content with using the single word "ship" or "steamship," but have usually superadded the expressions "tackle, apparel, and furniture," "engines, boilers, and machinery," and other like phrases. Such phrases, however, are, it is submitted, really superfluous. No reported case can be found in which it has been held that a libel against a ship, or a statute in regard to proceedings against ships, did not include in the term "ship" everything in or upon the ship which belonged to the owner and was necessary to the purpose for which she was employed. On the contrary, the authorities all indicate an inclusive, all-embracing use of the terms "ship" or "vessel."

The statute of 6 Anne, c. 37, reads as follows:

> SEC. 2. * * * That the flag officers, commanders, and other officers and seamen of every such ship or vessel of war shall have the sole interest and property of and in all and every ship, vessel, goods, and merchandize they shall take in any part of America. * * *
>
> SEC. 3. * * * letters of marque * * * for the attacking, surprising, seizing, and taking by and with such ship or vessel, any ship or vessel, goods, ammunition, arms, stores of war, or merchandizes belonging to or possessed by any of Her Majesty's enemies in America, * * * and that such ship or ships, vessel and vessels, arms, ammunition, stores of war, goods, and merchandizes whatsoever, with all their furniture, tackle, or apparel so to be taken. * * *

The act of 13 Geo. II, c. 4, uses the same language. In these statutes it is clear that precisely the same kinds of property, and all of them, are intended to be covered by the words used in each instance; i. e., that section 2 secures to the captors the property in the tackle, apparel, and furniture, and the arms, ammunitions, and stores of war, of the ships or vessels taken, just as much as if those articles had been specifically named, while the two descriptions of prize property in section 3, though not identical in words, are intended to have precisely the same scope.

The statute of 13 Geo. II, c. 4, sec. 19, reads as follows:

> * * * That in case any ship or vessel, or any goods or merchandizes shall be taken by

> any privateer, through consent or clandestinely, or by collusion or connivance, such ship and vessel and such goods and merchandizes, and also the ship's tackle, apparel, furniture, and ammunition of such privateer shall * * * be declared and judged good prize to His Majesty. * * *

In this section the tackle, apparel, furniture, and ammunition of the offending privateersman's vessel were separately mentioned, because they were to be condemned, although the vessel was not; but neither the tackle, apparel, and furniture, nor the arms and ammunition of the captured vessel were specifically mentioned, although they were indisputably prize, it being realized that as they were practically a part of the captured vessel they would of course be dealt with in the same way. In the one case there was a reason for distinguishing between the vessel and its tackle, apparel, furniture, and ammunition, but in the other case there was not.

The statute of 16 Geo. III, c. 5, reads as follows:

> Sec. 5. And for the more speedy proceeding to condemnation or other determination of any prize, ship, or vessel, goods or merchandizes, to be taken as aforesaid, * * * and in case no claim of such capture, ship, vessel, or goods shall be duly entered or made in the usual form, * * * or if there be such claim and the claimant or claimants shall not within five days give sufficient security (to be approved by such court of admiralty) to pay double costs to the captor or captors of such ship, vessel, or goods,

in case the same so claimed shall be adjudged lawful prize * * * but in case * * * it shall appear doubtful whether such capture be lawful prize or not * * * that then the said judge or judges shall forthwith cause said capture to be appraised, * * * for which purpose the said judge or judges shall cause the goods found on board to be unladen * * * and shall also proceed to take good and sufficient security from the captors to pay such costs as the court shall think proper, in case such ship shall not be condemned as lawful prize. * * *

SEC. 17. * * * That appraisements and sales of any ship or ships, goods, wares, or merchandizes shall be made by agents. * * *

SEC. 37. * * * That nothing in this act shall extend to any ship or vessel, or the cargo thereof, which shall have been or may be cleared out from any port in Great Britain or Ireland before * * * .

In these sections, as in many others of the same act, there is no mention of tackle, apparel, and furniture, nor of anything except ships and cargoes, the latter being usually described as "goods and merchandizes," and yet it is perfectly evident that every mention of a "ship" or a "vessel" included the tackle, apparel, furniture, stores, and armament of such ship or vessel, all of which tackle, apparel, etc., became prize in consequence of the capture of the vessel to which it appertained. After the adoption of the Constitution of the United States the first act to regulate prize was that of March 2, 1799 (1 Stats., 709–715), providing as follows:

SEC. 5. *And be it further enacted*, That all captured national ships or vessels of war shall be the property of the United States—all other ships or vessels, being of superior force to the vessel making the capture, in men or guns, shall be the sole property of the captors—and all ships or vessels of inferior force shall be divided equally between the United States and the officers and men of the vessels making the capture.

SEC. 6. * * *

13. The bounty given by the United States on any national ship of war taken from the enemy and brought into port shall be, for every cannon mounted carrying a ball of twenty-four pounds or upward, two hundred dollars. * * *

It can not be doubted that these sections meant that the tackle, sails, apparel, furniture, stores, boats, guns, ammunition, and other appurtenances of captured national ships or vessels of war should be the property of the United States, as well as the ships themselves, and that in regard to all other "ships or vessels" the words were used in the same comprehensive sense.

The question as to what property should be regarded as practically part of the ship itself has also arisen in other classes of cases besides that of prize. The statute of 53 Geo. III, c. 159, to limit the responsibility of shipowners, provided in the first section that an owner should not be liable for damage done to the cargo, without his own fault, "further than the value of his or their ship or vessel, and the freight due or to grow due." In other sections the word "appurtenances" was used as well as "ship or vessel." In *The Dundee*

(1 Hagg., 109, 122) the question arose whether, in determining the measure of the owner's liability, the value of certain fishing stores should be included in the value of the ship. Lord Stowell held that it should, saying:

> A cargo can not be considered as the appurtenances of the ship, being that which is intended to be disposed of at the foreign port for money or money's worth vested in a return cargo. Its connection with the ship is merely temporary, and it bears a distinct character of its own. But those accompaniments that are essential in its present occupation not being cargo, but totally distinct from cargo, though they are not direct constituents of the ship (if indeed they were they would not be appurtenances, for the very nature of an appurtenance is that it is one thing which belongs to another thing), yet if they are indispensable instruments, without which the ship can not execute its mission and perform its functions, it may, in ordinary loose application, be included under the term ship, being that which may be essential to it, as essential as any part of its own immediate machinery.

The owner of the *Dundee* subsequently declared in prohibition in the King's bench, where the court reached the same conclusion as had Lord Stowell. Lord Tenderden (then Abbott, C. J.,) said:

> In this [first] section the word "ship" only is used, but in the following sections the phrase "value of the ship and her appurtenances" occurs not less than ten times. The same

phrase occurs in the first section of the 7 G. 2, c. 15, and of the 26 G. 3, c. 86. The three acts are all *in pari materia*, and there can be no doubt that the first section of the act on which this question arises, is to be understood as if the words "with all her appurtenances" were used therein, supposing those words would make any difference in the sense.

* * * * *

The fishing stores were not carried on board the ship as merchandise, but for the accomplishment of the objects of the voyage; and we think that whatever is on board a ship for the object of the voyage and adventure on which she is engaged, belonging to the owners, *constitutes a part of the ship and her appurtenances* within the meaning of this act, whether the object be warfare, the conveyance of passengers, or goods, or fishery.

This construction furnishes a plain and intelligible general rule; whereas if it should be held that nothing is to be considered *as part of the ship* that is not necessary for her navigation or motion on the water, a door would be opened to many nice questions and much discussion and cavil. (*Gale* v. *Laurie*, 5 Barn. & Cress., 156).

It is noteworthy that Lord Tenterden took it as a matter of course that whatever was necessary for the navigation or motion of a ship on the water was "part of the ship," and that the only questions which could possibly arise (questions which his decision sought to prevent from arising) would concern property on

board the ship for the purposes of the particular voyage on which she was engaged.

In *Hall* v. *Ocean Ins. Co.* (21 Pick., Mass., 472) the court considered a boat "as a part of the ship," as between assurer and assured, because it was a necessary part of the ship's furniture.

These various instances of a comprehensive use of the term "ship" or "vessel" serve to make clear the meaning of Rule VIII of the Rules of Practice for the Courts of Admiralty, framed by this court in pursuance of the act of August 22, 1842, chapter 188, which rule provided as follows:

> In all suits in rem against a ship, her tackle, sails, apparel, furniture, boats, or other appurtenances, if such tackle, sails, apparel, furniture, boats, or other appurtenances are in the possession or custody of any third person, the the court may, after a due monition to such third person, and a hearing of the cause, if any, why the same should not be delivered over, award and decree that the same be delivered into the custody of the marshal or other proper officer, if upon the hearing the same is required by law and justice.

This rule certainly does not mean that each of the several classes of things above mentioned must be separately mentioned in the libel in order to be covered by it (that if the word "sails," for instance, were omitted, the libel would not cover the sails, though it covered everything else), but rather that if in a suit in rem against a ship, including her tackle, sails, apparel,

etc., whether they are specifically mentioned or not, it appear that any article properly belonging to the vessel has been removed from it, the court may decree its delivery to the marshal. The following cases illustrate the application of the rule:

> The voyage contemplated by the vessel, and for which supplies were furnished, was a pearl-fishing voyage. As part of her necessary equipment for this enterprise she was provided with a diving bell, air pipes, and other apparatus not required for use as a "navigating ship," but indispensable for the accomplishment of the objects of the particular voyage she was about to enter upon. * * *
>
> The previous enumeration of "tackle, sails, apparel, furniture, and boats" included everything belonging to the vessel as a "navigating ship." Unless the word "appurtenances" applies to other objects on board belonging to the owners for the purposes of the voyage it can have no operation. The word was, no doubt, used advisedly by the Supreme Court. * * *
>
> I think, therefore, that the lien in this case extends to all the articles belonging to the owner which (not being cargo) have been placed on board for the objects and purposes of the voyage and enterprise in which she was about to embark. (*The Witch Queen*, 3 Sawy., 201.)

It was held accordingly that the parties who had furnished material and supplies for the vessel had a lien upon the pearl-fishing apparatus as well as upon the rest of the outfit and the vessel itself.

> The wrecking apparatus seized by the marshal was a part of the ship, her tackle, apparel, and furniture, by means of its immediate and indispensable connection therewith, in the particular occupation to which was destined and in which she was engaged, and as such was responsible justly with the rest of the ship tackle, apparel, and furniture, for the payment of seamen's wages and supplies. (*The Edwin Post*, 11 Fed., 602.)

Since the general substitution of steam for sails, the words "boilers, engines, and machinery" have usually been added to the other descriptive words given in Rule VIII, but they are not essential.

It is therefore submitted that the words "ship or vessel of war belonging to an enemy," in section 4635, were used in the same comprehensive sense that had marked their use in several previous statutes, both English and American, and that the intention was to give bounty for the sinking or destruction of the ship as a whole, including its tackle, apparel, furniture, boilers, engines, machinery, boats, and other appurtenances. This bounty, as has already been shown, was given when vessels of war, as distinguished from merchant vessels, were sunk or otherwise destroyed, and it was given on account of the injury inflicted upon the enemy's fighting force. It was given "in lieu of" prize money (*Porter* v. *United States*, 106 U. S., 607; *The Selma*, 1 Low, 30), and there is no suggestion in these cases that the bounty was given as a substitute for only a part of the prize money. It was not

intended that any part of the material of the vessel or of its tackle, apparel, furniture, boilers, engines, machinery, boats, or other appurtenances, should, if recovered, be the subject of condemnation in prize for the benefit of the captors. On the contrary, it is perfectly evident that what was meant was that the bounty should be a substitute for all prize money, and that if the condition of an enemy's vessel of war is such that the naval force which has reduced it to that condition is entitled to bounty, then it is not entitled to any prize money whatever, either for any portion of the vessel or for any property recovered from it. All such property belongs to the Government, *jure reipublicæ*. (See *The Siren*, 13 Wall., 389.)

The most valuable appurtenances recovered from the wrecks were the guns, but they and all the other apparel or appurtenances were equally a part of the vessel. The guns of a vessel, its compasses, its search lights, its boats, are just as essential to the vessel as its decks, or cabins, or machinery. In point of fact, the guns are attached to the vessel as permanently as the machinery itself, and the same is true of many other articles which were taken from these vessels. The proper test, however, is not whether any particular piece of property is physically attached to the vessel, but whether it belongs to the vessel; i. e., whether it is to be used in connection with those purposes for which the vessel itself as a vessel of war exists. To take the most extreme case, supplies of food on board a vessel of war, intended for the use of the crew, or

money intended for the payment of the crew, must, it is submitted, be regarded as appurtenances. They are simply part of the necessary outfit of the vessel, without which its utility as a vessel of war would be as short as if it were deprived of its engines or propeller.

In many cases growing out of the Spanish war vessels alone were condemned and their cargoes restored, while in others the vessels were restored and the cargoes condemned. No case of the former character can, however, be found in which the boats, engines, boilers, tackle, apparel, furniture, stores, equipment, etc., were not sold as part of the vessel; nor a single case of the latter character in which the United States, in restoring the vessel, presumed to strip her of her tackle, apparel, furniture, sea stores, etc., as not belonging to the same category as the vessel itself.

The practice in regard to libels and orders of sale in prize cases is not uniform as regards the extent to which a vessel's outfit is referred to. A very full description is "the ——, her boats, engines, boilers, tackle, apparel, furniture and equipment." A less full but equally good description, covering precisely the same property, is "the ——, her tackle, apparel, and furniture." A still more concise but equally comprehensive description is "the ship ——," or "the steamship ——." None of these descriptions would include cargo, and all of them would include everything upon the vessel except the cargo and the personal effects of the officers, crew, and passengers. It was in this inclusive sense,

it is submitted, that the words "any ship or vessel of war belonging to an enemy" were used in section 4635 of the Revised Statutes.

The Comptroller of the Treasury, in a case which recently came before him, held that money taken from a Spanish vessel of war which had been "sunk or otherwise destroyed" was not to be treated as prize-money. (5 Comp. Dec., 452.)

In the brief of the Messrs. King in *United States* v. *Sampson*, and perhaps also in their brief in the present case, occurs the following significant statement:

> Bounty is granted, as we have seen, where the gallantry and success were both as great [as in cases of capture], but where no *res* resulted from which any reward could have been obtained.[a]

In view of the fact that bounty has been granted in cases where a great deal of the vessel remained, which could apparently have been sold for something, even if comparatively little, the words "no *res* from which any reward could have been obtained" presumably refer to the legal status of the *res* rather than to its physical existence. Be this as it may, however, the significant fact is that the counsel who contend that bounty may be granted for the destruction of a vessel, and also prize money for so much of the outfit as can be recovered, say, in the same breath, that the circumstance which calls for bounty is that "no *res* resulted

[a] This quotation is taken from a draft of the brief, seen prior to printing by courtesy of the Messrs. King.

from which any reward could have been obtained." According to them, their clients have recovered bounty in the Court of Claims for the destruction of the *Reina Cristina*, *Castilla*, and other vessels on the ground that, in consequence of their destruction, "no *res* resulted from which any reward could have been obtained," but are entitled to insist in a district court that a *res*, viz, the equipment of the vessels, did result, and that they should obtain a reward from it in the form of prize money. Greater inconsistency is scarcely conceivable.

The learned judge of the court below seems to have conceded that bounty was a substitute, though not an equivalent, for all prize money that might be recovered on account of the structure of the ship itself, but he held that the "outfit and appliances" were prize, even where bounty was paid for destruction of the vessel. He said:

> The reward is apparently bestowed for the injury done to the enemy in the loss of fighting power; it matters not how valuable may be the appliances and outfit that go down with her or that are involved in her destruction. * * * I find nothing in the statute to prohibit the condemnation in prize of property captured or taken from ships sunk or destroyed in addition to bounty paid for the destruction of the ship. (Rec., 158.)

Here a distinction is manifestly attempted to be drawn between the ship itself (i. e., apparently, the hull) and the "appliances and outfit," which words

seem to have been intended to include everything except the hull of the ship.

No authority was cited in support of this view, even by way of analogy, and it is wholly at variance with the long line of authority in statutes and decisions cited above, to the effect that the word "ship" includes everything in the way of "appliances and outfit," unless some clear distinction is made between them. Two reasons were, however, advanced for holding that an enemy's vessel of war may be the subject of bounty on account of its destruction, and also of prize money on account of property taken from it, the first reason being that the bounty alone would be an inadequate reward. In view of the fact that bounty has been judicially stated to be "a substitute for the prize itself," this reason seems rather extraordinary. It is probably true, as the learned judge suggested, that "the original idea was that the amount so ascertained [i. e., by the number of persons on board the enemy's vessel] would be a fair substitute for the prize itself, and such idea may not have been far wrong in the days of wooden vessels of war," but it comes perilously near judicial legislation to hold that both bounty and prize money may be recovered, on account of the same vessel, merely because "in these days of steel-armored cruisers and battle ships, with all their expensive appliances, the highest amount of bounty allowed is very inconsiderable compared with the value of the ship sunk or destroyed." The words of the bounty section (R. S., 4635) are the same as they were when the section was

first enacted in July, 1862, when the navies of the world were still composed of wooden vessels. The battle between the *Monitor* and the *Merrimac* had occurred only four months before (March 9, 1862), and while it may have been realized that a change in the construction of vessels of war would have to be made, Congress could not possibly have foreseen the recent developments in naval architecture, or even have anticipated that there would be any very serious increase in the cost of vessels. When the act of July 17, 1862, was passed, the bounty would have been, and was presumably intended to be, a fair substitute for the prize itself, and as the same bounty provision which is found in that act was reenacted in 1864 and incorporated into the Revised Statutes in 1872 without any change of language, it must have been intended that the scope and effect of the section, as reenacted, should be the same that it had been previously.

The other reason advanced by the court below was that "if the vessel were captured the cargo or outfit and appliances would enter into the estimate of the total value." As no one denies that if an enemy's vessel of war had a cargo aboard (a most unlikely circumstance nowadays), when sunk or otherwise destroyed in action, the cargo, if recovered, would be prize, the words above quoted can only mean that the "outfit and appliances" are a species of cargo, as the libellant's counsel actually contend. The distinction between the cargo and the ship has already been referred to, and it is submitted that nothing in the way of the outfit or equipment of a ship can possibly be regarded as

cargo, since, although such outfit and equipment are to some extent movable, they are placed in the vessel with the idea that they shall remain there until they are used up or worn out. Some of the "outfit and appliances," such as engines, boilers, gun mounts, etc., are physically attached to the ship, so as to be only removable with considerable difficulty.

A cargo may be a prize entirely separate from the vessel in which it is carried, and the reason for this is that the cargo has nothing to do with the vessel any more than a passenger has to do with it. Contraband of war in a neutral vessel is prize, though the vessel is not; neutral goods in an enemy's vessel are free, though the vessel is condemned. If an enemy's vessel carrying neutral goods is captured, the neutral goods alone are free, and every part of the outfit and equipment of the vessel is prize. Similarly, if a neutral vessel carrying contraband of war is arrested, the contraband cargo will be prize, but not any part of the outfit or equipment of the vessel.

It is true that if the outfit and equipment of a vessel were thrown overboard in a storm on the way to the prize court, this would not prevent the vessel from being condemned any more than if the cargo had been thrown overboard, but the vessel, as a prize distinct from her cargo, would be worth just so much less by loss of her equipment and outfit; whereas, were the cargo lost the value of the vessel itself as a prize would remain the same. Were the equipment and outfit unloaded, and the vessel burned at the wharf and thus

lost, this would not prevent such equipment and outfit from being prize, if the vessel was a prize; but they would be prize simply because the vessel to which they had belonged had been a prize, and the burning of that could not make them any less a prize. It is true that prize money may be adjudged for either vessel or cargo separately or for both together, but it would be something wholly new in prize law for prize money to be adjudged for the equipment and outfit of a vessel when the vessel had never been and was not entitled to be a prize.

> The cargo of a vessel is the lading of a ship or vessel; the merchandise or wares contained in a ship or vessel. (*The Governor Cushman*, 1 Abb., 14; 1 Biss., 490; 10 Fed. Cas., 888).

The distinction between cargo and outfit or supplies was considered at some length in a Massachusetts case, where the court said:

> In respect to the cargo, it appears that the property on board the *Henry* consisted partly of mules, and of hay, corn, etc., which were put on board for their subsistence on the voyage from St. Jago to Charleston. And it is contended that the hay, corn, etc., were protected by this policy under the name of cargo. We think, however, that they are more analogous to outfits than to cargo. The value of this provender was to be compensated for in the price of the mules in the market, as in the whale fishery the value of the outfits is to be made up by the proceeds of the oil. It has been argued that there was an expectation that a considerable quantity of the

hay and other provender would remain unconsumed if the vessel should have an ordinarily good passage, and would be sold as cargo at the port of discharge. But this food for the cattle was not taken on board as merchandise, and the circumstance that some of it might remain to be sold at the end of the voyage does not make it cargo any more than the remnants of fishing lines, harpoons, etc., in the whale fishery would make the outfits to become cargo within the common meaning and understanding of merchants and underwriters.

Then it is to be considered whether mules can be viewed as cargo. According to Postlethwaite, cargo signifies "all the merchandises and effects which are laden on board a ship, exclusive of the soldiers, crew, rigging, ammunition, provisions, guns, etc., though all these things load it sometimes more than merchandises." In that enlarged sense the mules might be considered as cargo, and there should seem to be no distinction whether they were on or under deck. * * *

There were, however, 10 doubloons on board, which we think may be considered as within the word cargo. * * * There is no evidence that this money was intended for the expenses of the captain, and not as cargo to be laid out at the port of discharge, as dollars carried to India are to be invested for the use of the owners. (*Wolcott* v. *Eagle Ins. Co.*, 4 Pick., 429, 433.)

This last statement clearly indicates that even money is not cargo unless it is intended for commercial use

in the same sense in which cargo is so intended. Money that is to be used for seamen's wages or to purchase supplies, on a vessel of war, is a part of the outfit of such vessel, and must share its status if "sunk or otherwise destroyed."

The reasons given by the court below for holding that the outfit and appliances of an enemy's vessel of war, which is sunk or otherwise destroyed in action, are prize, would apply equally well to any part of the structure of the vessel itself which might be recovered. Indeed, the logical conclusion to be drawn from the reasoning of the court below is that if every part of such a vessel were recovered piecemeal, the fact that bounty had been paid for the destruction of the vessel would not prevent all the separate parts of the vessel so recovered from being prize property. The effect of the decision is to negative what was said in *Porter* v. *United States* and *The Selma*, and to hold that bounty is not "a substitute for the prize itself," except to the extent that the vessel as an entirety can not be sent in as prize, though all its separate parts may be. It is submitted that what was said in *Porter* v. *United States* and *The Selma* was said advisedly, and that the bounty is a complete substitute for prize rights not merely in the ship itself, as a vessel, but in all property recovered which appertained to the ship, whether as a part of its structure or as a part of its outfit or equipment.

QUESTIONS RAISED BY THE CROSS APPEAL OF ADMIRAL DEWEY.

1.

STATUS OF PROPERTY TAKEN ON LAND.

The second section of the libel in this case asserts that the squadron under the libellant's command captured from the King of Spain, among other things, certain property, consisting of anchors, anchor gear and chains, electric apparatus and materials, etc., without stating whether this property was captured on vessels belonging to the King of Spain or on land, but it appears from the evidence that the larger portion of it was taken from the naval arsenal at Cavite. The same section of the libel also avers the capture of "certain guns, ammunition, ship's supplies, and supplies of various kinds from the arsenal at Cavite, and from the shore batteries defending the harbor and city of Manila." The court below held that no property taken on land could be subject to adjudication as prize, and dismissed the libel as to all such property. On account of this decision, the libellant has taken a cross appeal.

In attempting to make the libel in this case cover property taken on land, the libellant has confounded prize with booty. Prize has been defined as follows:

> **Prize. In maritime law.**—The apprehension and detention at sea of a ship or other vessel by authority of a belligerent power, with either the design of appropriating it, with the goods and effects it contains, or with that of becoming master of a whole or a part of its cargo.

The vessel or goods thus taken.

Goods taken on land from a public enemy are called booty; and the distinction between a prize and booty consists in this: That the former is taken at sea and the latter on land. (*Bouvier's Law Dict.*)

Capture of prize may be generally defined as the taking by a belligerent of enemy property on the high seas with an intent to convert and appropriate it to the belligerent's use. (*Roberts, Admiralty and Prize*, 464.)

Maritime capture or prize.—Lawful prize includes enemy property captured on the high sea or in territorial waters belonging either to the captor or to the enemy, and property of neutrals captured and confiscated for breach of blockade, or as contraband of war. (*Risley, Law of War*, 144.)

Booty, on the other hand, is thus defined:

The capture of personal property by a public enemy *on land*, in contradistinction to prize, which is a capture of such property by such an enemy *at sea*. (*Bouvier's Law Dict.*)

Strictly speaking, booty is the property captured, rather than the capture of such property, but with this qualification the definition is, it is submitted, absolutely correct.

Towns, forts, lands, and all immovable property taken from the enemy are called *conquests;* captures made on the high seas are called *prize;* movables taken on land are called *booty*. (*2 Baker's Halleck's Int. Law*, 74.)

Pothier treats of booty and prize as follows:

Of what is taken from the enemy.

86. Besides the right of taking possession by which we acquire property in things which belong to no one, by taking possession of them, which we have treated of in the preceding section, there is another species of right of taking possession, which exists by the law of nations, by which a sovereign, and those upon whom he confers his right, acquire property in the things which they take from their enemies in a just war.

In this species of taking possession must be included conquests and booty, which will form the subject of the first article; and maritime prizes (*prises sur mer*) which will form the subject of the second. We shall add a third article on prisoners of war.

ARTICLE I.—OF CONQUESTS AND BOOTY.

Par. I. Of conquests.

87. The right of conquest is the right which a sovereign, who has the right to make war, has, when he does so justly, to acquire property in the cities, castles, and lands of the enemy by taking possession of them.

* * * * *

Par. II. Of booty.

88. All personal property which the victors take from the vanquished is called booty, or *præda bellica.*

There are two species of booty. The first species is that which is taken in a battle, in a fight, or in any other public expedition. As the battle is fought or the expedition undertaken in the name of the king, so it is the king who is regarded as taking all the booty that is taken in it, and who acquires the property therein by the agency of his troops, who only lend him their arms, and who acquire for the king and in the name of the king all the booty which is taken.

This is why the jurisconsult Modestinus holds that a soldier who abstracts any article of booty is guilty of the crime of peculation: *Is qui prædam ab hostibus captam subripuit, lege peculatus tenetur ; l. 13, ad. L. Jul. pecul.*

Although the property in all booty is acquired by the king, sometimes the general, presumably with the king's consent, distributes a part among the troops to encourage them.

89. A second species of booty is that which troops take when allowed to make pillage of a city, as in the case of Bergen-op-Zoom. In this case the general, in the name of the king, and as being deemed to have power from him, grants to his troops the rights which he has, *jure belli*, to take possession of, and by so doing to acquire property in things which he permits them to pillage. In consequence, each soldier, as being in this regard a concessionary of the rights of the king, acquires, *jure belli*, property in the things of which he has taken possession in pillage.

* * * * *

Article II.—Of Prizes which are Taken on the Sea.

We shall see, in the first paragraph, who are those who have the right to cruise against enemy vessels; in the second, what vessels and property are lawful prize; in the third, what captains of vessels armed for war must observe when they have made a prize, and how the produce of the prize is distributed; in the fourth we shall treat of ransom.

* * * * *

Par. II. What vessels and property are lawful prize.

95. All vessels pertaining to the enemy, whether they are armed for war or are merchant vessels, can lawfully be taken, according to the laws of war, either by the officers of the Kings's navy or by captains of privateers who have a commission from the King. (Article 4.)

* * * * *

Not only the enemy ship which has been taken is good prize; all the merchandise and all the property which are found on the ship are equally good prize.

This is so whoever may be the owners of the merchandise which is found on the enemy vessel which has been taken. This is expressly decided by article 7, which reads: "The merchandise of our subjects and allies which is found in an enemy vessel shall be equally good prize." (Pothier, De la Prop., pt. 1, ch. II.)

Then follows a discussion of various questions in regard to prize, but not a word is said to indicate that

anything other than ships and their cargoes can be lawful prize.

Owing, however, to the fact that both booty and prize belong primarily to the Sovereign, so that private individuals can have no rights in either but such as the Sovereign may grant, and to the further fact that British vessels of war and privateers were often granted the right to take booty as well as prize, there are some English reported cases in which booty is treated precisely as prize would be, and it is even probable that the essential difference between the two was sometimes overlooked. Moreover, several British statutes expressly provided that the ships of the royal navy and privateers might seize and take "any place or fortress upon the land;" but it is to be noted that it was not until 1779 that any statute was passed expressly authorizing the taking *as prize* of "any ship or vessel, goods, ammunition, arms, stores of war, or merchandise belonging to or possessed by any of His Majesty's enemies, *upon the land*, or in any sea, creek, haven, or river." (Stat. 19 George III, c. 67.) Apparently the prize acts passed before 19 George III were construed to cover property taken in any place or fortress upon the land, the word "place" presumably meaning a fortified place, but the act of 19 George III, which, not having been enacted until after the Declaration of Independence, never was in any sense a part of the law of the United States, was the first to use the broad language of the passage above quoted.

As might have been expected, the essential difference between prize and booty was well understood by

that great authority, Lord Stowell, who adjudicated many cases of each class. He said:

> I know no other definition of prize goods than that they are goods taken on the high seas, *jure belli;* out of the hands of the enemy. (*The Two Friends*, 1 Rob., 271, 284, A. D. 1799.)

The statute of 46 George III, c. 100, provided:

> That, from and after the passage of this act, all and every prize agent and prize agents, * * * shall, from and out of the proceeds of all prizes which, after the passage of this act, shall be taken during the present war by any ship or vessel of war in His Majesty's pay, retain for the use of the said royal hospital, and shall within ten days next after the distribution of the proceeds of every such prize * * * pay over to the treasurer of the said royal hospital or his deputy, etc.

In construing this statute Lord Stowell said:

> Here is not a word about land booty, taken by the conjunct operation of the army and navy, and I am, therefore, led to the consideration of the meaning of the word prize as here applied. It evidently means maritime capture effected by maritime force only—ships and cargoes taken by ships. It is perfectly well known that a land force has no interest in prize, properly so called; what a land force takes by itself is not prize, but booty. (*Genoa and its Dependencies*, 2 Dods., 444, A. D. 1820.)

The concluding sentence can not mean that property captured on land is only booty when captured by

a land force, for it had just been stated that it was booty when captured "by the conjunct operation of the army and navy." In this particular opinion Lord Stowell said nothing about booty captured by a naval force acting alone, because the case before him was not of that character, but involved a "conjunct operation." Had he had to pass on a case of property taken on land by a naval force he would, however, have unquestionably held that that also was booty, for he had already announced positively, in *The Two Friends*, that prize was something "taken on the high seas."[a] Booty is property captured on land, whether taken by a land force, a naval force, or a combined land and naval force, and the mere fact that in England grants of the right to booty have been made to the parties to whom prize rights have been granted does not change the character of booty or the meaning of the term "prize."

Lord Stowell was evidently thinking of prize in the true sense when he wrote in 1794, in regard to "the general principles of proceeding in prize causes," as follows:

> When two powers are at war, they have a right to make prizes of the ships, goods, and effects of each other upon the high seas. Whatever is the property of the enemy may be

[a] It is superfluous to remark that while the expression "the high seas" is sometimes used to mean uninclosed waters, it is also frequently used to include any waters on the coast "without the boundaries of low-water mark," though within a bay or roadstead (*United States* v. *Ross*, 1 Gall., 624), or, in other words, the waters over which a court of admiralty has jurisdiction. As used in the phrase quoted in the text, the latter meaning was obviously intended.

> acquired by capture at sea. (Story, Notes on the Principles and Practice of Prize Courts, 3; Wheaton on Captures, 310.)

Lord Stowell's paper does not refer to captures on land at all, although the British statutes gave such captures practically the same status as captures at sea. This fact evidently did not, in his opinion, bring the former class of captures within the "general principles" of prize law.

The earlier decisions under the British commissions and statutes are reviewed in *Lindo* v. *Rodney*, decided in 1782, which is reported in a note to *Le Caux* v. *Eden* (2 Douglas, 613).

The case arose on an application for a prohibition in the King's Bench to stop the judge of the Admiralty from proceeding to the condemnation of goods taken by the British land and sea forces (the land forces being on board the ships) at the island of St. Eustatius, and the question was, Whether the goods, being taken on land, though in consequence of a surrender to ships at sea, excluded the only prize jurisdiction known in the Kingdom? Lord Mansfield held that no prohibition could issue, such goods being properly subject to condemnation as prize. His opinion, based upon certain ancient treaties and commissions, upon judgments rendered in the court of Admiralty, and upon the statutes of 17 Geo. II, c. 34, § 2; 29 Geo. II, c. 34, § 2, and 19 Geo. III, c. 67, § 2, was as follows:

> 1. That so far back as can be traced, which is for a century, the Admiralty has judged of

and condemned goods taken on land as prize, as well as goods taken at sea.

2. That every common law authority to be found on the subject allows and supports the jurisdiction.

3. That the legislature has, in many acts of Parliament, recognized and referred to it as clear, certain, and undoubted.

As regards all cases prior to the statute of 17 Geo. II, it is enough to point out that the jurisdiction of the prize court depended upon the particular terms of a temporary commission, issued during a particular war and expiring at its close. Lord Mansfield said:

> [The commission appointing a judge of the Admiralty] enumerates particularly, as well as generally, every object of his jurisdiction; but not a word of prize.
>
> To constitute *that* authority, or to call it forth, in every war, a commission under the great seal issues to the lord high admiral, to will and require the court of Admiralty, and the lieutenant and judge of the said court, his surrogate or surrogates, and they are thereby authorized and required to proceed upon all and all manner of captures, seizures, prizes, and reprisals of all ships and goods that are, or shall be, taken; and to hear and determine, according to the course of the Admiralty and the law of nations.

That the jurisdiction was a temporary one, given by special commission, is clearly shown by the reference to "the terms of the patent under the broad seal of England," in the case decided April 15, 1692, cited by

Lord Mansfield. Moreover the words, "to hear and determine according to the law of nations," must be understood in connection with the terms of the commission, whatever they might be. If the commission gave a jurisdiction beyond what was ordinarily recognized by the law of nations, that law was to be followed only in so far as it accorded with the commission.

Similarly, the statutes did not grant a permanent authority, but were limited to captures made during a particular war. A special jurisdiction, granted from time to time, limited to the periods of particular wars and to property captured from particular nations, is obviously very different from a permanent jurisdiction over property captured from any enemy in any war; and, moreover, a special jurisdiction granted from time to time to the admiralty courts of a particular country can not be said to be founded upon the law of nations. The English commissions and statutes made booty, when taken by naval forces, prize *in England*, but established no general rule of law for all nations, and even in England, in cases not involving the peculiar operation of such commissions and statutes, the fundamental distinction between booty as property taken on land and prize as property taken at sea always remained. This is shown by the definitions given by Lord Stowell in the *Two Friends* and *Genoa and its Dependencies* (already cited) and by the case of the *Ooster Ems*, not reported, but cited in the *Two Friends*, where the High Court of Admiralty decided that it had no jurisdiction over the property of enemies taken ashore

from a vessel stranded on the Goodwin Sands, such removal having apparently taken place before any attempt was made to hold the goods as prize.

The English cases which recognize the right to treat booty taken on land as prize, were not based upon any general principles of admiralty law common to all countries, but purely and solely upon the English statutes, as to which the view of Peters, J., though announced with reference to another feature of prize jurisdiction, is not inappropriate:

> Acting as we now do, in a national and not a dependent capacity, I can not conceive that we are bound to follow the practice in England any more than that of our own or any other nation. Customs purely colonial were parts of our laws, even in the time of our connection with Great Britain. * * * The Admiralty proceeds by a law which considers all nations as one community, and *should not be tied down to the precedent of one nation.* (Opinion in *Jennings* v. *Carson*, in the district court, 4 Cr., 7, note.)

In strong contrast with the provisions of the British statutes, the American statutes, from the very first, made no provision for treating any captured property as prize except vessels and their cargoes. In fact, the prize laws in force from 1800 to 1864 used language which necessarily excluded the idea that any other kind of property could be held as prize.

The rules for the regulation of the Navy of the United Colonies, adopted November 28, 1775, con-

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tained a form of ship's articles to be signed by the officers, seamen, and marines, in which the following expressions occur:

> We do also severally agree and pledge ourselves, that when any prize or prizes have been taken, to follow the express directions of the said ———, or his successors, in boarding the said prize, and be under the command of any officer whom the said ——— shall appoint, and be assisting to him to carry the said prize to whatever port or ports said prize or prizes shall be assigned by the said ———. And we do hereby further severally agree and covenant in that case to be true and faithful in the discharge of our duties and trust, and will not in any shape embezzle, defraud, or plunder anything on board such prize or prizes. * * *
>
> And it is also further agreed to be the true intent and meaning of all parties hereto that any officer or officers or any of the ship's company sent on board any prize or prizes shall have as good a share and interest of any prize that shall be thereafter taken during his or their absence as if he or they had been on board the said vessel at the time of taking thereof. * * * Provided always, * * * that if the said officer or officers and such of the said ship's company to whom the conduct and management of any prize has been intrusted do not (first having accepted the commands of the said commander concerning the said prize under his or their custody) immediately repair to the respective port or harbor where the said ———, or his successor in command, shall order, or

> do not proceed with the said prize or prizes so taken to the respective port or ports to be assigned by said ——— for the time being, then they, etc.
>
> He who first discovers a ship or vessel which shall afterwards become a prize shall be entitled to a double share of such prize.
>
> He who shall first board a ship or vessel making resistance, which shall become a prize, shall be entitled to a triple share. (1 Journals of Congress, 250 to 252.)

It is clear that the only possible prizes to which the above ordinance refers are ships and their cargoes. Had it been intended to include booty taken on land, words would have been used to express such intention.

On April 2, 1776, Congress adopted a form of commission to privateers, authorizing commanders of vessels to fit them out in a warlike manner,

> and by and with the said ——— and the crew thereof, by force of arms, to attack, seize, and take the ships and other vessels belonging to the inhabitants of Great Britain, or any of them, with their tackle, apparel, furniture, and lading, on the high seas, or between high and low water marks, and to bring the same to some convenient port in the said colonies, in order that the courts which are or shall be hereafter appointed to hear and determine cases, civil and maritime, may proceed in due form to condemn the said captures, if they be adjudged lawful prize. (2 Journals of Congress, 111.)

On the next day Congress adopted a resolution providing that blank commissions for privateers should be

signed by the President and sent to the general assemblies of the several colonies, to be filled up and delivered to persons "desiring to fit out private ships of war for making captures of British vessels and cargoes." Another resolution of the same date required every privateer to produce a statement in writing giving a description of his vessel and its crew and equipment, and to give a bond for the faithful performance of the various requirements of his commission, the form of bond containing the words:

> ——— hereby apply for a commission and letters of marque and reprisal to arm, equip, and set forth to sea the said ——— as a private ship of war, and to make captures of British vessels and cargoes.

The same resolution also adopted the following instructions to commanders:

> I. You may, by force of arms, attack, subdue, and take all ships and other vessels belonging to the inhabitants of Great Britain on the high seas and between high-water and low-water marks, except ships and vessels bringing persons who intend to settle and reside in the United Colonies, etc.
>
> II. You may, by force of arms, attack, subdue, and take all ships and other vessels whatsoever carrying coal, arms, gunpowder, ammunition, provisions, or any other contraband goods to any of the British armies or ships of war employed against these colonies.
>
> III. You shall bring such ships and vessels as you shall take, with their guns, tackle, apparel,

furniture, and ladings, to some convenient port or ports of the United Colonies, that proceedings may thereupon be had in due form before the courts which are or shall be there appointed to hear cases, civil and maritime.

IV. You, or one of your chief officers, shall bring or send the master and pilot and one or more principal person or persons on any ship or vessel by you taken, as soon after the capture as may be, to the judge or judges of such court as aforesaid, to be examined upon oath, etc.

V. You shall keep and preserve any ship or vessel and cargo by you taken until they shall, by a sentence of the court properly authorized, be adjudged lawful prizes. (2 Journals of Congress, 113, 115.)

The revised instructions contained in the ordinance of May 2, 1780 (3 Jour. of Cong., 452), refer distinctly to operations on land, but do not grant any prize rights in property taken on land. They read:

I. You may, by force of arms, attack, subdue, and take all ships and other vessels belonging to the Crown of Great Britain, or any of the subjects thereof, on the high seas, or between high and low water marks. * * * And you may also *annoy the enemy* by all the means in your power, by land as well as by water.

As the other paragraphs of the ordinance of 1776 were reenacted without material change, it is perfectly clear that while privateers might harry the enemy's coasts, they could not take any property on land for their own benefit.

These provisions in regard to privateers are particularly noticeable in the contrast which they furnish to the act of 19 George III, c. 67, passed in 1779, which authorized privateers to attack, surprise, seize, and take "any place or fortress *upon the land*, or any ship or vessel, goods, ammunition, arms, stores of war, or merchandise belonging to or possessed by any of His Majesty's enemies *upon the land*, or in any sea, creek, haven, or river." British privateers, as well as vessels of the British navy, were authorized to take property on land, and to proceed in the same way in regard to such property as if it had been a vessel or its cargo, but the commissions issued to American privateers extended only to the taking of vessels and their cargoes, and nothing except vessels and their cargoes could be treated as prize even when taken by ships of the American Navy. After the adoption of the Constitution the first act to regulate prize was that of March 2, 1799 (1 Stats., 709–715), providing as follows:

> SEC. 5. *And be it further enacted*, That all captured national ships or vessels of war shall be the property of the United States—all other ships or vessels, being of superior force to the vessel making the capture, in men or guns, shall be the sole property of the captors—and all ships or vessels of inferior force shall be divided equally between the United States and the officers and men of the vessels making the capture.
>
> SEC. 6. *And be it further enacted*, That the produce of prizes taken by the ships of the

United States, and bounty for taking the ships of the enemy [i. e., the national vessels of war, which were not to be held as prize, and for which a bounty was given instead], be proportioned and distributed in the manner following, to wit:

1. To the captain actually on board at the time of taking any prize, being other than a public or national vessel, or ship of war, three-twentieths of that proportion of the proceeds belonging to the captors.

* * * * *

9. Whenever one or more of the ships of the United States are in sight at the time of [when?] any one or more other ships as aforesaid are taking a prize or prizes, or being engaged with an enemy, and they shall all be so in sight when the enemy shall strike or surrender, they shall share equally, according to the number of guns and men on board of each ship so in sight; but no privateer or armed ship, being in sight of a national ship of war at the taking of any prize, shall be entitled to any share in such prize or prizes.

The above provisions contain not a word to indicate that any booty or property taken on land is to be treated as prize, and the omission is very significant. National ships of war are not to be prize, but are to belong to the United States; and under another clause of section 6 a bounty is to be paid for their capture. Other ships or vessels, including of course their cargoes, are, if of superior force, to be the sole property of the captors, but if of inferior force, to be divided equally

between them and the United States. The rules for the distribution of prize money, or of the bounty given in lieu of it, are manifestly intended to be complete; but if booty was also intended to be treated as prize it is most extraordinary that there is no rule for the distribution of the proceeds. Were they all to go to the captors, or, if not, what was to be their share and what that of the United States? The act fails to answer these important questions, and the only reasonable inference is that it was not intended that they should arise, because it was not intended that any booty, any property taken on land, should be treated as prize.

The act of April 23, 1800 (2 Stats., 45, 52), provided as follows:

> SEC. 5. *And be it further enacted*, That the proceeds of all ships and vessels, and the goods taken on board of them, which shall be adjudged good prize, shall, when of equal or superior force to the vessel or vessels making the capture, be the sole property of the captors; and when of inferior force, shall be divided equally between the United States and the officers and men making the capture.

The act containing this section remained in force until the enactment of the act of July 17, 1862 (12 Stats., 600), when the section above quoted was reenacted in identical language in section 2. Had there ever been any possibility of a doubt as to the meaning of this language in excluding booty, or property taken on land, from the category of prize property, the

decision in *Mrs. Alexander's Cotton* (2 Wall., 404–422) necessarily removed all doubt on this point.

The acts of June 26, 1812, and January 27, 1813 (2 Stats., 759, 792), relating to privateers and prizes taken by them, used the words "captures and prizes of vessels and property," "vessels, goods, and effects," but the seventeenth section of the act of 1812 and the fifth section of the act of 1813 explain the scope of these terms by using the term "captured vessels and cargoes" in a connection which shows conclusively that "vessels and cargoes" were the only sources of prize money within the contemplation of these acts. In fact, the fifth section of the act of 1813 provides that privateers or their agents "may, at any time before a libel shall be filed against *a captured vessel or her cargo*, remove the same from any port into which *such prize vessel or property* may be first brought." This interchangeable use demonstrates beyond question the fact that the term "property," in these acts, means "cargoes" and nothing else.

The case of *Mrs. Alexander's Cotton*, already cited, decided March 9, 1865, overruled the earlier district court cases of *1,253 Bags of Rice* (Blatch. Pr. Cas., 211; 18 Fed. Cas., 723), *282 Bales of Cotton* (*id.*, 302; 24 Fed. Cas., 435, reversed by the circuit court, presumably because the property was taken on land, but there is no report of the decision), and *680 Pieces of Merchandise* (2 Spr., 233; 22 Fed. Cas., 252). It held that although the capture of property on land was lawful, property so taken belonged to the Government alone, because

the language of the act of 1862 "*excludes property on land from the category of prize for the benefit of captors*, and seems to be decisive of the case as far as the claims of captors are concerned." As already stated, the statute construed in that case was, as to this point, a reenactment, in identical language, of the act of 1800, previously in force, so that *Mrs. Alexander's Cotton* interprets the act of 1800 as well as that of 1862. More than this, it shows by manifest analogy that the act of 1799, in providing only for the distribution of the proceeds of "ships or vessels" as prize money, meant that such "ships or vessels" and whatever goods they might contain, should be the only source of prize money.

In regard to this case of *Mrs. Alexander's Cotton* it must be admitted that the capture could have been held no prize on another ground, viz, that it was made in the course of a conjoint military and naval expedition; but the fact remains that the case was not decided on that ground, but solely on the ground that the property was taken on land. The other point was apparently not raised, and the first decision in regard to such a matter was made in *The Siren* (13 Wall., 389), seven years later.

It is true that in *The Emulous* (1 Gall., 563), and in the same case on appeal, *Brown* v. *United States* (8 Cranch., 110, 138), Story, J., stated that the jurisdiction of the Admiralty "is not confined to mere captures at sea," and that the Admiralty "not only takes cognizance of all captures made at sea, in creeks, havens,

and rivers, but also of all captures made on land where the same have been made by naval force or by cooperation with a naval force." This view was, however, based exclusively upon the British decisions, which, as already stated, were rendered in accordance with certain peculiar British commissions and statutes. As a statement of British law, it was correct, but while the view that that law should control an American court of admiralty is entitled to respect as that of an eminent jurist, it must not be overlooked that Story, J.'s, decision in *The Emulous* was reversed, and that his opinion in *Brown* v. *United States* was a dissenting opinion, and that "it is in this, as well as in several other positions of his very learned opinion, that he is overruled by the court. The result of the case in the court of final resort certainly is that property on land is not, without the aid of the statute, liable to capture and condemnation as prize of war." (*United States* v. 269½ *Bales of Cotton*, 1 Woolworth, 236, 264, *per* Miller, J.) The precise point decided in *Brown* v. *United States* was that in the absence of legislative authority British property found in the United States, on land, at the commencement of hostilities with Great Britain, could not be condemned as enemy's property; in other words, that the property was not subject to capture at all; and hence it was unnecessary to decide the question as to whether the capture, if it had been lawful, would have entitled the captor to have the property treated as prize within the jurisdiction of a court of admiralty. Had the latter question arisen, it can hardly be doubted, in view of

the language of the statutes then in force, that the court would have reached the same conclusion which was ultimately reached in 1865 in *Mrs. Alexander's Cotton*.

It appears, therefore, to be indisputable that down to and including the act of 1862 no statute of the United States ever granted any right of prize except in ships and their cargoes; and it may be added in this connection, that while there are several statutes granting prize money to individuals for vessels captured and afterwards appropriated by the United States, or restored, there is no case of a similar grant for any prize taken on land.

The present libel, however, is not filed under the act of 1862, but under sections 4613–4634 of the Revised Statutes, which sections were originally enacted in the act of June 30, 1864 (13 Stats., 306), and the meaning of those sections at the time of their original enactment and subsequent reenactment must be inquired into. Section 10 of the act of June 30, 1864, reads as follows:

> SEC. 10. That the net proceeds of all property condemned as prize shall, when the prize was of superior or equal force to the vessel or vessels making the capture, be decreed to the captors; and when of inferior force, one-half shall be decreed to the United States and the other half to the captors: *Provided*, That, in case of privateers and letters of marque, the whole shall be decreed to the captors, unless it shall be otherwise provided in the commissions issued to such vessels. All vessels of the Navy

> within signal distance of the vessel or vessels making the capture, under such circumstances and in such condition as to be able to render effective aid if required, shall share in the prize, and in case of vessels not of the Navy, none shall be entitled to share except the vessel or vessels making the capture, in which term shall be included vessels present at the capture and rendering actual assistance in the capture. All prize money adjudged to the captors shall be distributed in the following proportions, namely:
>
> [Then follow the rules as to distribution, differing in some points from those established in 1862.]

The same act expressly repealed, *inter alia*, section 2 of the act of July 17, 1862, but said nothing about section 5 of the act of April 23, 1800, which was in the same words. In the absence of any law to the contrary the reenactment of any statute or section is not of itself a repeal of the original statute or section (*Cordell* v. *State*, 20 Ind., 1), and section 20 of the act of July 17, 1862, had merely provided that "all provisions of previous laws, which are inconsistent with those of this act, shall be, and are hereby, repealed" (12 Stats., 610). Section 5 of the act of April 23, 1800, not being inconsistent with anything in the act of July 17, 1862, but merely identical with section 2 of that act, was clearly not within the above clause of repeal, and hence must have remained in force, both during the lifetime of said section 2 and after its repeal.

Even were this otherwise, it is evident that if Congress had intended to change the law and extend the jurisdiction of a prize court to property taken on land, it would have used language capable of expressing that intention, especially as it is well settled that maritime prize does not include such property except by force of a statute which expressly includes it. The act of 1864 introduced certain new provisions as to the ascertainment of the vessels which were to be regarded as captors, and incidentally it changed the words "the proceeds of all ships and vessels, and the goods taken on board of them" to "the net proceeds of all property condemned as prize;" but it did not use any such words as "land," or "property on land," or "property wherever taken." It simply referred to "property," by which of course was meant such property as was understood to be capable of being made prize of war according to the law as established in the United States when the act was passed. Had any statute of the United States ever provided that booty, property taken on land, should be treated as prize, there might be some color for a contention that the word "property," in the act of 1864, was intended to include booty, but as the statutes of the United States, ever since it became a nation, had always excluded booty from "the category of prize for the benefit of captors," there is absolutely nothing to support such a contention.

Certainly it can not seriously be contended that under the old law the restriction of prize "to ships or vessels and the goods taken on board of them" constituted a

wrong which it was intended to set right by the prize act of 1864. Was the restriction of prize captures to property on the sea a wrong which called for a remedy? The whole system of prize, of the plundering of private and public property for the benefit of individuals, has been for more than two centuries condemned by thoughtful people as inconsistent with civilization and subversive of true naval discipline. This feeling has led to a gradual restriction of the practice, to the abandonment of privateering, and very recently to the repeal of our prize statutes. That Congress should have intended, in 1864, to extend the scope of the prize law, to make that prize which had never previously been so in the United States, is *per se* improbable, as such an intention would have been opposed to the tendencies of civilization. Certainly such a change would not have escaped the notice of this court when deciding the case of *Mrs. Alexander's Cotton*, and the court would undoubtedly have pointed out that its decision would not apply to property taken under the act of 1864, which had been passed more than eight months before the decision was rendered. The absence of all suggestion that the law had been changed is very significant.

Again, in *United States* v. 269½ *Bales of Cotton* (1 Woolw., 236, 264), Miller, J., said: "Property on land is not, without the aid of statute, liable to capture and condemnation as prize of war." This suit was brought under the act of 1862, so that the judgment, rendered in 1868, was directly controlled by *Mrs. Alexander's Cotton*, but it is significant that Miller, J., both thought

the matter so clear that he did not refer to that authority and also said not a word to indicate that it had ever been suggested that the law as it stood when the property under consideration was taken had since been changed by the act of 1864.

The change from the wording of section 2 of the act of July 17, 1862, to that of section 10 of the act of June 30, 1864, can not be explained by any previous judicial construction of the former section, for no authoritive decision had as yet been rendered, and the three district court cases (already cited), which were subsequently overruled, held that property taken on land was prize, even under the act of 1862. Congress, while undertaking to improve the phraseology of the law (and the clause relating to relative force certainly needed improvement), may well be presumed to have intended that the meaning of the law should remain the same that it had been since before the first year of the century, and that if it should be necessary to decide what that meaning was, the Supreme Court could be trusted to give a proper decision, whatever the lower courts might have done. No motive for a change in the effect of the law has been, or probably can be, suggested.

The commissioners who compiled the Revised Statutes either overlooked section 5 of the act of April 23, 1800, or considered it so completely incorporated into section 2 of the act of July 17, 1862, as to have been repealed by the repeal of that section, so that they did not retain it in the revision, and hence section 4630 of the Revised Statutes, which was originally enacted as

the first sentence of section 10 of the act of June 30, 1864, is the only provision on this point. Whether section 5 of the act of April 23, 1800, was really entitled to incorporation in the Revised Statutes or not, one thing is certain, viz, that it has always been understood that under section 4630, as previously under section 5 of the act of April 23, 1800, and section 2 of the act of July 17, 1862, property taken by a naval force on land was not prize for the benefit of captors. Thus in the edition of the Revised Statutes issued in 1878, prepared by Hon. George S. Boutwell, the commissioner appointed under the act of March 2, 1877 (18 Stat., 268), the very first section relating to prize is section 4613, which was section 33 of the act of 1864, reading as follows:

> The provisions of this title shall apply to all captures made as prize by authority of the United States, or adopted and ratified by the President of the United States.

Commissioner Boutwell was required by the act of 1877 to insert "marginal references to the decisions of the several courts of the United States," and two such references were made in regard to this section 4613. One was to *The Cotton Plant* (10 Wall., 577), which held that a capture on the Roanoke River was not a prize, because made on "the inland waters of the United States;" while the other reference was to *Mrs. Alexander's Cotton.* Commissioner Boutwell, at least, was fully convinced that the words "captures made as prize," in this section, did not mean captures on land,

and until the date of the filing of the present libel, it does not appear that the correctness of his view was ever disputed.

Mr. Boutwell's view is evidently shared by Sir Sherston Baker, for his edition of Halleck's International Law, published in 1893, contains this note (Vol. II, p. 81):

> Property captured on land by a naval force of the United States is not a "maritime prize," even though it may have been a proper subject of capture generally. *Alexander's Cotton* (2 Wall., 404), and see act of March 3, 1863, 12 Stat. at L., 820; act of July 2, 1864, 13 Stat. at L., 375.

The statutes referred to in the above note are the abandoned and captured property act, and the section in regard to captures on inland waters. There is no suggestion that the prize act of 1864 changed the law from what it had been previously, as interpreted in *Mrs. Alexander's Cotton*. On the contrary, the note can only be regarded as a distinct statement that property captured on land by a naval force of the United States was not maritime prize, either after the passage of the act of 1864 or before.

If the act of 1864 had been enacted to change the existing law and make booty subject to adjudication as prize, it would have operated as a partial repeal of the act of March 12, 1863 (12 Stat., 820), known as the abandoned and captured property act. That act did not "apply to any lawful maritime prize by the naval forces of the United States," and the words "lawful

maritime prize," as used with reference to the prize law of 1862, then in force, meant merely "ships and vessels, and the goods taken on board of them." Now, if the act of 1864 applied to property taken on land, it would have applied to property to which the abandoned and captured property act had previously applied, thus partially repealing that act. Had Congress had any such intention as this, it would have expressed that intention in unmistakable language, but certainly no such intention can be gathered from the language used.

As regards the application of the doctrine of *Mrs. Alexander's Cotton* to the act of 1864, it can not possibly be held that the case applies to private property only, as distinguished from the property of the hostile nation or government. It was held that though the cotton in question was private property, it was just as much the subject of capture as if it had been the property of the Confederate Government, but that the capture, though lawful, was not a capture for the benefit of the captors, but for that of the United States, and this because the property was taken on land, not on the sea.

Even if the prize act of 1864 be considered solely by itself, without reference to the legislation which had preceded it, it is still evident that every provision of the act contemplated the capture of vessels and cargoes only, and that no provision contemplated that any other kind of property should, if captured, be the subject of adjudication as prize. In the opinion of the court below the statute is carefully analyzed and its

provisions compared, with the conclusion that "the legislative intent, gathered from the whole statute, excludes from 'prize' property captured on land." This part of the opinion in particular is well worth careful attention. (Rec., 153–155.)

The first section of the act begins with the provision that "It shall be the duty of the commanding officer of any vessel or vessels making a capture to secure the documents of the ship and cargo." This practically defines a "capture" as a "ship and cargo." The same section provides that the commanding officer "shall send to said court, as witnesses, the master, one or more of the other officers, the supercargo, purser, or agent of the prize, and any person found on board whom he may suppose to be interested in or to have knowledge respecting the title, national character, or destination of the prize. He shall send the prize, with the documents, officers, and witnesses, under charge of a competent prize master and prize crew, into port for adjudication." Here, again, "the prize" is referred to in a connection which clearly indicates that the only species of prize contemplated by the act was primarily a "ship and cargo." The same section refers to "the captured vessel or any part of the captured property." As nothing had previously been suggested in this section about any other kind of "captured property" than "a ship and cargo," it is evident that the words "captured property," when used to indicate any other property than a captured vessel itself, can only refer to a captured cargo.

The third section refers to the duties of the prize master of the captured vessel.

The sixth section refers to the duties of the prize commissioner in regard to the captured vessel and its cargo or stores.

The tenth section provides "that the immediate proceeds of all property condemned as prize shall, when the prize was of superior or equal force to the vessel or vessels making the capture, be decreed to the captors; and when of inferior force one-half shall be decreed to the United States and the other half to the captors." This provision is very similar to that of section 11 in regard to the rate of bounty for persons on board of hostile vessels of war destroyed in action, in regard to which it has been decided that the word "force" means naval force merely, without reference to any land force which may happen to be in a position to support or aid the enemy's naval force. (*Dewey* v. *United States*, 178 U. S., 250, 510.) Obviously the same rule should be applied to section 10, and it must be held in the present case that the prize was of inferior naval force to the vessel or vessels making the capture. If "the force" of the prize can not include any land force, it is evident that the prize itself can not be anything that is on the land, and that the words "all property taken as prize," in section 10, must refer exclusively to vessels and their cargoes.

Section 11, in regard to bounty, refers plainly to hostile vessels of war only.

Section 33, applying the act to "all captures made as prize by authority of the United States, or adopted and

ratified by the President of the United States," is the same in connection with which, as already stated, Mr. Boutwell cited the case of *Mrs. Alexander's Cotton* in the official edition of the Revised Statutes.

The other sections of this act refer to vessels and other prize property in general terms, but the meaning of those terms is sufficiently defined and limited by the sections which have been particularly referred to above. The language of these latter sections clearly confines the operation of the act to captured ships and their cargoes, and there is absolutely nothing in the act, taken as a whole, to warrant its application to property captured on land.

The libellant's counsel, indeed, call attention to *Seventy-eight Bales of Cotton* (1 Low., 11; 21 Fed. Cas., 1100) as an instance where the capture was held to be good prize, although the requirements of the act of June 30, 1864, as to securing documents, putting a prize crew aboard, etc., could not be complied with, as the capture consisted of cotton floating on the water, and from this they draw the extraordinary inference that the act of 1864 was intended to apply to property captured on land. The simplest answer to this remarkable contention is that as the cotton was captured on May 31, 1864, the case did not arise under the act of June 30, 1864, but under that of July 17, 1862, under which, as this court has held, only property captured afloat was prize. But the contention could not have held good even if the capture had been made under the act of 1864. Primarily, the cotton was flotsam,

but, having evidently been jettisoned by an enemy or a neutral engaged in violating blockade, it was cargo subject to capture, and being captured afloat it was prize, its status not having been changed by its being jettisoned. As cargo captured afloat, it would have been within both the letter and the spirit of the act of 1864.

When the various sections of the prize act of 1864 were reenacted in the Revised Statutes the only change was a change in the order of the sections. The thirty-third was made the first section under the title "prize," and the thirty-second was made the second section under that title, while the first section of the act was made the third section under that title, and there were a number of other similar changes. There was no appreciable change in language, nor were any new sections added which would have any effect on the construction of those which were reenacted. Hence it is submitted that, as shown by Commissioner Boutwell in his note to section 4613, the doctrine of *Mrs. Alexander's Cotton* applies to the prize laws of the United States in force at the time when the property to which the present libel relates was captured.

The counsel for the libellant, however, contend that the design of the legislation of 1864 was to extend the right of prize beyond ships and their contents to whatever else under the accepted rule of prize courts was to be considered prize of war. A sufficient answer to this contention is to say that, except for the anomaly introduced by the British commissions and statutes, "the

accepted rule of prize courts" was that property on land was not the subject of maritime prize. Counsel go further, however, and state that the intention was to restore what they call "the ancient rule," the English practice of treating the capture of public property of an enemy on land, by a force exclusively naval, as prize. It is submitted that a practice depending upon the particular terms of special commissions of temporary duration, issued from time to time, and necessarily subject, as to their terms, to the dictates of the policy of their particular day, can not properly be called an "ancient rule," and even if it could it was certainly not a part of that common law which was the inheritance of the descendants and successors of the founders of the thirteen colonies. As a matter of fact the act of 1864, and the Revised Statutes which reenact it, sufficiently define what shall be prize, to the exclusion of property taken on land, as has already been pointed out above; but even if this had been left doubtful, one would have to turn to the law as previously established in the United States, or to the recognized law of nations, to elucidate the doubt. The peculiar law of England, at variance with the recognized law of nations, would be the last authority which Congress could have had in mind in 1864.

As already stated above, section 10 of the act of 1864 introduced new provisions defining the rights of vessels within signal distance, and slightly modified the rules of distribution, besides covering the ground of section 2 of the act of 1862 in slightly different but

fairly equivalent language. It is scarcely conceivable that a mere change of language in a single section should have been intended to repeal the law as established by statute and ordinance ever since the outbreak of the Revolution, in regard to such a fundamental matter as the character of the property which should be subject to condemnation as prize, and to introduce by implication a rule which had never been a part of the permanent law of England, but had merely been legalized from time to time by special commission or temporary statute. Such a change, moreover, being obviously not contemplated by the other provisions of the statute and being opposed to the tendencies of civilization, and there being no apparent motive for making it, can not, it is submitted, be implied. As was well said by the late Mr. Justice Gray, when chief justice of Massachusetts:

> The legislature is not to be lightly presumed to have intended to reverse the policy of its predecessors, or to introduce a fundamental change in long-established principles of law. (*Robinson's Case*, 131 Mass., 376.)

PROPERTY RESTORED TO SPAIN.

As regards a certain part of the property to which the present libel relates, viz, property captured on land and subsequently restored to Spain under the fifth article of the treaty of Paris, there is still another reason why such property is not subject to adjudication as prize. That article provided that "stands of arms, uncaptured war vessels, small arms, guns of all calibers,

with their carriages and accessories, powder, ammunition, live stock, and materials and supplies of all kinds belonging to the land and naval forces of Spain in the Philippines and Guam, remain the property of Spain." (30 Stats., 1757.) This release and restitution of all right to property of the various kinds referred to was one which the United States had a right to make as against all parties who might have had an interest in the property as prize property if there had been no such release. The release took effect, of course, from April 11, 1899, the date when the ratifications of the treaty were exchanged, and the property affected by the release was such as had not been already appropriated by the United States for its own actual use before that date. This release or restitution having been made, not merely before any adjudication in regard to the property released, but even before any libel had been filed in regard to it, must, it is submitted, necessarily prevent the alleged captors from having any decree entered in their favor in regard to such property. The right of a government to release captured property, not merely before the filing of a libel, but at any time until the decree of condemnation is entered, is absolute and complete. No title vests in the captors until there has been a final adjudication in the prize court. (*Home* v. *Camden*, 2 H. Bl., 533.)

The law on this subject was laid down very clearly and at considerable length by Lord Stowell in *The Elsebe* (5 C. Rob., 173, 181), as follows:

> It is admitted on the part of the captors, whose interests have been argued with great force (and

not the less effective, surely, for the extreme decorum with which that force has been tempered), that their claim rests wholly on the order of council, the proclamation, and the prize act. It is not (as it can not be) denied that, independent of these instruments, the whole subject-matter is in the hands of the Crown, as well in point of interest as in point of authority. Prize is altogether a creature of the Crown. No man has, or can have, any interest but what he takes as the mere gift of the Crown. Beyond the extent of that gift he has nothing. This is the principle of law on the subject and founded on the wisest reasons. The right of making war and peace is exclusively in the Crown. The acquisitions of war belong to the Crown, and the disposal of these acquisitions may be of the utmost importance for the purposes both of war and peace. This is no peculiar doctrine of our constitution; it is universally received as a necessary principle of public jurisprudence by all writers on the subject—*Bello parta cedunt reipublicæ*. It is not to be supposed that this wise attribute of sovereignty is conferred without reason; it is given for the purpose assigned, that the power to whom it belongs to decide on peace or war may use it in the most beneficial manner for the purposes of both. A general presumption, arising from these considerations, is that government does not mean to divest itself of this universal attribute of sovereignty, conferred for such purposes, unless it is so clearly and unequivocally expressed. In conjunction with this universal presumption must

be taken also the wise policy of our own peculiar law, which interprets the grants of the Crown in this respect by other rules than those which are applied in the construction of the grants of individuals. Against an individual it is presumed that he meant to convey a benefit with the utmost liberality that his words will bear. It is indifferent to the public in which person an interest remains, whether in the grantor or the taker. With regard to the grant of the sovereign it is far otherwise. It is not held by the sovereign himself as private property, and no alienation shall be presumed except that which is clearly and indisputably expressed.

With these rules of interpretation, the title deeds of the captors must be considered to determine whether the Crown has, in these deeds, renounced that power, which in principle it possesses, and in practice has frequently exercised. If there is anything which can be supposed to produce that effect, it must be the conveyance of a right, of some species or other, to other persons, and these can be no other than the captors, in virtue of which they claim an indefeasible interest in prize once taken. The right contended for is a right to seize and bring to adjudication all ships of the enemy. Does the right to seize, thus generally given, alone bind the Crown so as to bar it from any further exercise of its power with respect to seizures? Certainly not; for, after that right is given, to seize all ships of the enemy, the Crown can exempt as it sees fit. The Crown, which declares general hostilities, can limit their operation; it can

except individuals; it grants particular passes; it exempts particular classes of the enemies' ships, notwithstanding the right thus given of seizing all ships. If, then, the right of seizing all ships, thus generally given, does not bind the Crown in its power of qualifying that right by subsequent modifications, on what ground is it contended that the exercise of its power, with respect to proceeding to adjudication, is barred by the mere act of seizure? The mere act of seizure, surely, can not work any such effect; it is an act, in itself, in some degree, always dubious till adjudication, and possibly erroneous; yet this dubious act is to convey to the party a right indefeasible to proceed to adjudication, when the very proceeding may be a further wrong done, an aggravation of costs and damages already occasioned by the improper seizure. I attended with great impatience to the able argument of Dr. Arnold, to learn what was the specific nature of the right conferred on the captors by the act of seizure, to which the effect of barring the power of the Crown to release is to be attributed. It is admitted to be, in degree, an imperfect right. In species, it was stated, if I understand the argument, to be a *jus persequendi*, a right of action, and no more; no right of interest, but a mere right of bringing to adjudication. Whatever is the nature of this right, it is conveyed only in the order of council; it is not given in the proclamation or the prize act. It is, indeed, recited in both as a thing otherwise existing, but it makes no part of the powers conferred in either of those instruments. Now, according to the construction which is, in

my opinion, to be put upon this matter, this *jus persequendi*, as it is called, is not a right conveyed, but a duty enjoined. Captors have generally a right to seize, subject to this duty of bringing to adjudication—a duty enjoined, that they may not make seizures without bringing the ships and goods seized to the notice of the proper tribunal, in order to prevent the right of seizure from degenerating into piratical rapine. If the Crown imposes that obligation, the Crown can release it. * * *

The proclamation gives the whole property, but not till after adjudication; until that time, no beneficial interest attaches. So the prize act, in like terms, gives the whole interest or property, in opposition to that proportional and partial interest given by former acts, but not till adjudication. In adverting to these instruments, it is impossible not to remark the very guarded terms in which the benefit is conferred. The proclamation gives to privateers, "after final adjudication, and not before;" not merely after adjudication, but superadding a negative pregnant, "and not before." With regard to king's ships, the grant is expressed with similar caution; it gives the neat produce of all such prizes taken, the right whereof is inherent in us and our Crown. And again, it directs that such prize "may be lawfully sold or disposed of, by them and their agents, after the same shall have been to us finally adjudged lawful prize and not otherwise." What is the use of these guarded expressions? Surely not merely the object of protecting the interests of the claimant till after

adjudication. The Crown can not be supposed to be anxious to make a reservation or exception of that, which, without any exception, would be perfectly safe; for no interest of the Crown or its grantee could divest the interest of the claimant. The reservation must, *ex necessitate rei*, *ex defectu alicujus alterius materiæ*, apply to rights over which the Crown has a dominion, and which, unless reserved, it might be supposed to have granted away. What are these rights? The right of controlling the whole proceeding till final adjudication; the right of declaring that the party shall not be further proceeded against as an enemy; the right of suspending hostility against him with regard to property which has been seized under the general order of reprisals. For such purposes, and such purposes only, it must be that the Crown has declared that till after adjudication the captor has no interest which the court can properly notice for any legal effect whatsoever. In the case of captures made by the King's own ships the authority of the Crown is most marked upon the face, and in the substance, of every part of the proceedings in the most emphatical manner. The Crown officers are the prosecutors in the name of the Crown; the final adjudication, under the very terms of the act, is a condemnation to the Crown, and most clearly the interest would vest in the Crown under that condemnation if the act had not expressly superadded that it should inure to the benefit of the captors. In seizures made by private ships of war the hand of the sovereign authority is less visible in the mode and style of proceed-

> ings; but the right of the Crown is sufficiently guarded by the repeated declarations that the interest shall vest in such captors "after final adjudication," and not before.

The only difference between the rights of the Government and the captors as regards the captured property in England at the time of the decision just quoted, and in the United States under the Revised Statutes, is practically this—that if, where no property can be sent in for adjudication (owing to appropriation by the Government or other statutory cause), and the Secretary of the Navy does not, within three months after the capture, designate a district for the institution of proceedings, the captors may institute proceedings for adjudication in any district, as has actually been done in the present case. (Rev. Stats., § 4625.) In no other particular has the Government's control of the property been changed from what Lord Stowell held it to be. This provision of section 4625 is merely a concession to the captors, to enable the question of prize or no prize to be judicially determined even in cases where the Government holds that the capture is not within the prize statutes. This concession was surely never intended to give the captors any greater rights than if the libel had been filed by the Government in their behalf.

In point of fact, the restitution having been made by treaty, by the law of the land, it is not necessary to rely on the doctrine laid down in *The Elsebe*, sound and reasonable as that doctrine is. It is enough to

point to the treaty as necessarily fixing the status of the particular property in question.

The original answer of the United States did not refer specifically to this restitution by treaty, but on December 19, 1900, an amendment to the answer was filed covering this point. It appears that a board of officers was appointed to confer with the Spanish board of liquidation. A report of the former board, found in Appendix N N to the reports of the War Department for 1900, makes mention, on page 206, of the supplies at Cavite which had not at that time been segregated. A recent report of the War Department on file in the present case shows that certain property has been segregated and turned over to the Spanish board.

If property captured on land were prize property within the prize statutes, it would be necessary to deduct the value of the property restored from that of the property proved to have been taken; but as, it is submitted, property on land is not prize, this matter of restitution, though interesting, really cuts no figure in the case.

In the court below the libellant's counsel contended, and the contention will probably be renewed, that as the restitution was made after an appropriation by the United States, it came too late; or, in other words, that because the United States kept the property in its own control, so that it was in a position to restore it, therefore it could not restore it without making compensation to the would-be captors. This conclusion is rather extraordinary. Had the United States

conceded that the property was prize of war, and filed a libel against it for the benefit of the captors, then, under the doctrine of *The Elsebe*, it could have restored it, without liability to the captors, at any time before adjudication, as the brief for libelant practically concedes. How then can the fact that the United States never recognized any rights of the captors in this property, and has not filed any libel against it for their benefit, but has opposed the libel filed by them, make it liable to them for property restored before adjudication? The libellant's contention on this point confuses two kinds of appropriation. Under section 4624 of the Revised Statutes the United States has a right to appropriate prize property, and is responsible to the captors for their share of its value, but apart from that section the United States has also the right, as sovereign, to appropriate all property taken in war, other than prize property, without responsibility to anyone. In the present case the appropriation of all the property taken on land was made in reliance upon the latter power, and was never intended to be made under section 4624. Hence the appropriation made was not the kind of appropriation to which the libelant's brief refers. Yet even if it had been an appropriation under section 4624, such appropriation, it is submitted, could not have divested the United States of its sovereign right to restore before adjudication, without liability to the captors.

This contention of the libelant's counsel is strikingly at variance with their contention as to vessels

"sunk or otherwise destroyed." They contend, practically, that while the fact that a vessel is sunk or otherwise destroyed gives rise to a right of bounty if the United States leaves such vessel alone, yet if the United States, months afterwards, raises and reconstructs such a vessel, it must be treated as a prize—i. e., it must change its status. If, however, the United States appropriates captured property, that fact, they contend, permanently fixes its status as prize, so that it can never lose that status, even by restitution before adjudication.

For reasons already stated, both of these contentions are, it is submitted, wrong; but setting those reasons aside and looking at the matter from the standpoint of libelant's counsel, their contention for a changeable status in the one case and a permanent one in the other are still in conflict.

2.

STATUS OF CASCOS AND OTHER NONSEAGOING CRAFT.

The libel as originally filed related exclusively to vessels and other property taken from the King of Spain, but it was amended on April 25, 1901, so as to cover certain cascos or small native boats, and also to two wrecking boats, the property of private citizens residing in the Philippine Islands. The court below held that these small craft were not of such a character as to be within the scope of the prize statutes.

As stated by the court below, "the testimony as to capture, description, value, use, and appropriation of these craft is very meager and unsatisfactory." (Rec.,

159.) The idea of attempting to assert prize rights in regard to them was evidently an afterthought, which did not suggest itself until some time after the libel was filed.

A casco has been described by one of the witnesses as follows: "It is a large barge, rather larger than the ordinary canal boat; it has one deep, commodious hold in which the cargo is carried, and over the top has a thatched bamboo covering made in sections cut athwartships, which slide past one another." Their tonnage capacity was sufficient to carry about 140 tons of coal each. They were propelled by sweeps and by poling. They were not provided with ship's papers, and it would have been impossible to put a prize crew aboard them and send them to the nearest neutral port," for the very evident reason that they would, in all probability, have been lost on the way. They were all, as far as this record shows, private property, and most, if not all of them, were owned by native Filipinos. (Rec., 23, 24.)

Another witness states in regard to some of the cascos: "These cascos were cargo boats used in discharging cargoes of ships anchored in the bay. They varied

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[a] The opinion of the court below states that these boats could not have been sent "to the nearest neutral port for adjudication." (Rec., 158.) The last two words were inadvertently used, as there can be no adjudication in a neutral port (*The Josefa Segunda*, 5 Wheat., 338, 358; *Hopner* v. *Appleby*, 5 Mas., 71, 75), though a prize brought into a neutral port in distress may be repaired there for further navigation (2 Opins. A. G., 86; 7 id., 123). Even the old rule that a court of the captor's country could condemn a prize when the latter was in a neutral port (*Hudson* v. *Guestier*, 4 Cr., 293) would seem to be in conflict with Revised Statutes, sec. 4615, which require the prize, if in condition to be sent in at all, to be sent to the port where adjudication is to be had.

in capacity from 30 to 60 tons, and their value, as a matter of positive fact, varied from $1,500 to $1,800, Mexican, apiece. I happen to know this, because subsequently I was on board to appraise the value of these cascos and I saw the bill of sale of nearly all of them." (Rec., 69.)

Besides these cascos, two floating derricks or wrecking boats were taken. It appears from the evidence that "they were flatboats. The large one was about 40 feet long and 15 feet broad, and it was capable of lifting a weight of about 7 tons. It could weigh more than that, but the derrick could lift that much." These boats had no means of propulsion, were not seagoing boats in any sense, but just for use around the harbor, and could only be used in comparatively smooth water. They could stand harbor seas, but "were not boats such as were provided for any of the ordinary ship's purposes." It would have been impossible to have put a prize crew on them and send them to the nearest neutral port. (Rec., 69, 70.) There is no evidence whatever as to the ownership of these wrecking boats; but from the fact that they are mentioned by the witness Hodges almost in the same breath with the cascos which belonged mostly, if not all, to native Filipinos, it is to be inferred that they also were the private property of Filipinos. They may have been the property of neutrals, and in any event it must be *proved* that they were enemy property before they can be held to have been good prize.

These cascos and flatboats are clearly not within the contemplation of the prize statutes, as indicated par-

ticularly by the provisions of sections 4615, 4617, and 4618 of the Revised Statutes. As already stated in another connection, section 4615 begins with the words, "The commanding officer of any vessel making a capture shall secure the documents of the ship and cargo, including the log book, with all other documents, letters, and other papers found on board. * * * He shall send the prize, with the documents, papers, and witnesses, under charge of a competent prize master and prize crew, into port for adjudication." Here it is evident that the word capture is practically defined as a "ship and cargo," and further, that a ship is defined as a vessel provided or entitled to be provided with the usual ship's documents and capable of being sent into port for adjudication under charge of a prize master and prize crew. Unless a captured vessel is of this character it can not be a prize within the contemplation of section 4615.

An open boat or other small nonseagoing craft, such as are always carried on large vessels, would of course be a prize as a part of the outfit of the vessel on which it was found when taken; but while it may be proper for a naval force to seize independent small boats (not a part of the outfit of a prize) for its own use or to keep them from being used by the enemy, there is no statutory authority for treating such vessels as prize. Even if the absence of the usual ship's papers could be overlooked, the fact that these cascos and flatboats could not have been put in charge of a prize crew and sent even to the nearest neutral port (to say nothing of

an American port, where alone could the question of their status as prizes have been tried) shows that they are not the kind of property which could be made a prize under our statutes. As already shown in another connection, these statutes are to be strictly construed, and grant nothing to the captors but what is necessarily covered by their terms.

While there seems to be no real ground to doubt that the prize statutes were never intended to apply to small craft like these cascos and flatboats, it may be interesting to notice some decisions in analogous cases under other statutes.

In *Ex parte Ferguson* (L. R., 6 Q. B., 280, 291) a ship is practically defined as "a seagoing vessel." The case arose under a statute providing that the word "ship" should include every description of vessel used in navigation not propelled by oars. These words were held to give the term "ship" a more extensive meaning than it ordinarily had, and in view of this more extensive meaning Blackburn, J., said:

> What, then, is the meaning of the word "ship" in this act? It is this: That every vessel that substantially goes to sea is a "ship." I do not mean to say that a little boat going out for a mile or two to sea would be a ship, but where it is its business really and substantially to go to sea, if not propelled by oars, it shall be considered a ship for the purpose of this act.

United States v. *An Open Boat and Lading* (5 Mas., 120; 27 Fed. Cas., 346) involved the definition of the word "vessel" as used in the nonintercourse acts of

May 15, 1820, and March 1, 1823 (3 Stats., 602, 740). Story, J., said:

> The boat itself is less than five tons in burthen, and is open and without any deck. * * * At the time of the seizure the boat had on board 28 barrels of tar and pitch. * * *
>
> I am not aware that in any of our laws respecting shipping the word "vessel" is applied to any description of boats like the present. The registry act (act of 1792, ch. 45) invariably uses the words "ship or vessel" as descriptive of the class of shipping which it includes. It contains no limitation by tonnage of the size of the ship or vessel, but the form of the certificate of registry (§ 9) supposes that such ship or vessel has a deck, mast, etc. And the regulations prescribed by our laws for ascertaining the tonnage of ships or vessels for the payment of tonnage duty and for other purposes of admeasurement, refer to such only as have one or more decks. (Act of 1799, ch. 128, § 64.) The fair inference deducible from these provisions is that the registry act was not meant to apply to ships or vessels without any deck. In respect to the coasting trade and fisheries, the same phrase, "ship or vessel," is used in the act of 1793, ch. 52, for enrolling or licensing them for such business, but no ship or vessel less than five tons in burthen seems within the purview of this act (§§ 1, 4, 26). The form of enrollment, too, presupposes that the ship or vessel has a deck, mast, etc., and her tonnage is to be ascertained in the same manner as in the case of registered ships. There is a provision also (§ 3)

that registered ships may be enrolled, and enrolled or licensed ships may be registered, which seems by implication to limit their sizes reciprocally to tonnage above five tons and to such as have a deck or mast. This construction is fortified by the language of the thirty-seventh section, which declares "that nothing in this act shall be construed to extend to any *boat* or lighter not being masted, or if masted and not decked, employed in the harbor of any town or city." It is plain from this clause that boats without masts or decks were not allowed to be enrolled or licensed for the coasting trade or fisheries. And the fishing bounty is confined to "boats or vessels" of more than five tons burthen. (See act of 1813, ch. 34, §§ 5, 6.)

There are also provisions in our laws which contemplate importations from foreign countries in vessels of a smaller description. But in such cases the general term "vessel" is not alone employed, but a more specific description is added. Thus, by the one hundred and fifth section of the act of 1799, ch. 128, importations are allowed on the northern and northwestern boundaries of the United States "in vessels or *boats* of any burthen;" and the next section (§ 106) goes on to provide "that all vessels, *boats*, rafts, and carriages of what kind or nature soever, arriving in the district aforesaid, containing goods, etc., shall be reported to the collector," etc. A distinction between *boats* and *vessels* is here taken; and a distinction does, in fact, exist in common parlance and maritime usage. The term "*vessel*" is never, or at least

very rarely, used to designate any water craft without a deck; but the term "*boat*" is constantly used to designate such small vehicles of this nature as are without a deck. In *Mortimer's Commercial Dictionary* a *boat* is defined to be "a small *open* vessel, commonly wrought by oars." He says that the term "ship" is a "general name for all large vessels." And it appears to me that the general sense in which the word "*vessel*" is used in our laws is in contradistinction to an *open boat*, and excluding the latter. Such is its meaning in the act of 1815, ch. 246, where it is declared lawful "for any collector, etc., to enter on board, search, and examine any *ship*, *vessel*, *boat*, or *raft*," etc. (See, also, act of 1802, ch. 45, sec. 8.) And when the word is found in our laws without anything in the context to explain or enlarge its meaning, it appears to me a sound rule of interpretation to construe it as used in that sense, which is its most common sense in maritime usage. Especially ought it to receive such an interpretation when it interferes with no known policy of the legislature, and a different course would involve general inconvenience.

In *Birkbeck* v. *The Hoboken Horse Ferry Boats* (17 Johns., N. Y., 54) it was held that ferryboats worked by horses, plying between New York and Hoboken, did not come within the term "ships or vessels of all descriptions," in a statute, in view of other language in the same statute restricting its operation to vessels which pass from one port to another port. This decision was followed in *Farmer's Delight* v. *Lawrence* (5

Wend., N. Y., 564), and *Many* v. *Noyes* (5 Hill, N. Y., 34). In the former case the court said:

> It never could have been the intention of the legislature to embrace within these acts the innumerable rowboats, sailboats, scows, and other small craft which crowd our harbors; they are not within the reason of the law nor within its terms as they are ordinarily used. They are not designated as ships or vessels in common parlance; *those terms are usually applied to vessels of a larger class.*

In *Hicks* v. *Williams* (17 Barb., N. Y., 523) a canal boat was held not to be "a vessel of the United States," within the meaning of the act of July 29, 1850 (9 Stats., 440).

A rowboat is not a "vessel" within the meaning of rule 21, § 4233 of the Revised Statutes, requiring steam vessels to keep out of the way of other vessels. (*Phila. and Reading R. R. Co.* v. *Adams*, 89 Pa., 31; *Fischer* v. *Camden, etc., Ferry Co.*, 124 id., 154.) In the latter case the court said: "When we speak of a rowboat we do not mean a vessel as that term is generally understood."

A floating dry dock is not the subject of salvage, not being a ship or vessel in the ordinary sense. (*Cope* v. *Vallette Dry Dock Co.*, 119 U. S., 625.)

Applying the general doctrine of these cases to the present one, it is manifest that these cascos and flatboats can not be within the operations of the prize statutes, which apply to seagoing vessels, provided with the ordinary ships' papers.

Even if section 4615 had not made it sufficiently clear that small nonseagoing boats were not the subject of capture as prize, it is submitted that to hold that they could be so captured would be totally at variance with the whole spirit and meaning of the opinion of this court in *The Paquete Habana* (175 U. S., 677), cited by the court below. The vessels under consideration in that case were seagoing, or at all events coasting, vessels of 25 and 35 tons burden, respectively, but were held not to be prize because they were fishing smacks. The underlying note of the entire opinion is that to make capture of the vessels of coast fishermen, peaceably pursuing their calling, would be derogatory to the civilization and humanity of a nation like the United States. Precisely "the same humane considerations," to quote the well-chosen words of the court below, apply to these cascos and flatboats. They were not vessels of war, nor could they be used for any offensive purposes directly. They might conceivably have been used for carrying the troops or supplies of the enemy about the harbor, but the same was true of the fishing vessels, which were held exempt from capture in *The Paquete Habana.* As a matter of fact, these small craft were not in use in any warlike way at the time they were taken. The cascos appear to have been in the possession of the native crews, who lived in the deck houses (Rec., 24), while the flatboats were presumably tied up to some wharf. In this connection another consideration should be noted which makes the libellant's position as regards these small

craft peculiarly weak. These small craft were not the property of the people with whom the United States was at war, but apparently of native Filipinos who, while claimed by Spain as its subjects, were not really on the Spanish side in the war. As soon as the present libellant's force was able to land and establish itself on shore it entered into friendly relations with the Filipinos, and provided many of them with arms for offensive and defensive operations against the Spaniards. To treat some of the Filipinos as friends and allies, and to treat others of them as enemies merely because they happened to be in the possession of small craft which might be of use to the United States, was certainly not a consistent course of action and should not be upheld by a court. What ultimately became of these cascos and flatboats does not appear from the record. It is to be presumed that they were needed for the legitimate use of the libellant's naval force, and this being so he had a right to take them just as he would have had a right to take any other private property; but the rules of humanity and of civilized warfare require that in such a case the owners should be paid their value if kept permanently, or paid a reasonable rental in case they were ultimately restored. Whether the rights of the Filipino owners of these little craft were ever recognized or not does not appear, but it is to be hoped that this was eventually done. If restitution was made, then these boats are not within the jurisdiction of the court, and in any event it is submitted that this court should not, by treating these boats as prize of war, put the seal of its

approval upon the spoliation of the poor Filipino natives who were their owners. It was sufficiently inconsistent with civilization that merchant vessels and the private property of Spanish citizens should have been prize of war upon the high seas during the recent hostilities, and every dictate of humanity must operate to deter a court from stretching the language of the prize law so as to make it applicable to such little craft as these cascos and flatboats.

In connection with this matter of small craft, it is to be observed that the property taken at the Cavite Arsenal included a certain number of small boats and launches. There was, for instance, a water boat, which was a part of the equipment of the arsenal, used to carry water from the shore to the various ships in the harbor. There were also certain gigs, whaleboats, and a wherry, as well as other small craft. (Rec., 6, 7.) These small craft were clearly not themselves of a nature to be taken as maritime prize. Had they belonged to any vessel which was captured as a prize, they would have been included in the prize property as a part of the outfit of the vessel, but, as a matter of fact, as the court below held, they either constituted a part of the equipment of the arsenal or were a part of the supplies stored there for future use, and hence can not be distinguished from the other property taken at the arsenal, which property, as already shown above, was not maritime prize.

In accordance with this view the decree stated that "all nonseagoing boats or craft afloat pertaining to

the said arsenal [were] not subject to condemnation in prize" (Rec., 160), and it is submitted that this portion of the decree should be upheld, as well as all that relates to the property taken at the arsenal.

There were also a number of other small craft which were a part of the outfit of the Spanish vessels which were sunk or destroyed in the engagement. The Spanish crews had escaped to the shore in these boats, and had abandoned them when they landed. As already stated above, these small boats can not be subject to condemnation in prize as "vessels," and hence their status must be precisely the same as that of the other property which formed part of the outfit of the sunken or destroyed vessels. If the decree of the court be reversed as to that property (as it is submitted should be done), then these small craft also should be held to be outside the operation of the prize statutes.

THE RELATIVE FORCE OF THE LIBELLANT'S FLEET AND OF THE ENEMY.

As it is conceded on the part of the United States that the *Manila* and certain smaller vessels were captured as prize of war, the question of relative force becomes relevant. Section 4630 of the Revised Statutes provides:

> The net proceeds of all property condemned as prize shall, when the prize was of superior or equal force to the vessel or vessels making the capture, be decreed to the captors; and when of inferior force, one-half shall be decreed to the United States and the other half to the captors.

The third section of the libel alleges that "the enemy's vessels engaged in said action, supported by torpedoes and mines and land batteries, as aforesaid, were of superior force to the vessels of the United States." It is submitted that the language of section 4630 is fully as clear as that of section 4635, to the effect that the "force" referred to is a naval force only.

In section 4635 the words are "if the enemy's vessel was of inferior force," and the words of section 4630 are "when the prize was of superior or equal force." The words "the prize" must be understood with reference to section 4615, as a "ship and cargo;" and even if it could possibly be held that property taken on land could be maritime prize, this would have no effect on the construction of section 4630, for the property in the Cavite Arsenal was in no sense a part of the force with which the libelant's fleet had to contend. It having been conclusively decided in *Dewey* v. *The United States* (178 U. S., 510) that the Spanish force engaged at Manila was inferior to that of the libelant, the court below decreed "that the prize aforesaid, being the vessels and other property captured afloat, was of inferior force to the vessels making the capture." (Rec., 160.) This feature of the decree should, it is submitted, be upheld.

It is therefore submitted that as to the *Don Juan de Austria*, the *Isla de Cuba*, and the *Isla de Luzon*, and as to all property taken from these vessels or other vessels which were sunk or otherwise destroyed at the battle of Manila Bay, and all small craft which were

part of the outfit of any of the said vessels, the decree should be reversed and set aside, and that in all other respects (apart from the questions raised exclusively by the appeal of Edwin F. Stovell, in which the United States is not interested on either side) it should be affirmed.

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Assistant Attorney-General.

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In the Supreme Court of the United States.

OCTOBER TERM, 1902.

THE UNITED STATES, APPELLANT,
v.
GEORGE DEWEY, ADMIRAL U. S. NAVY, ETC. } No. 309.

GEORGE DEWEY, ADMIRAL U. S. NAVY, ETC.,
v.
THE "DON JUAN DE AUSTRIA," "ISLA DE CUBA," "Isla de Luzon," etc. } No. 310.

SUPPLEMENTAL BRIEF FOR THE UNITED STATES.

As was anticipated in the brief for the United States (pp. 15–25), the brief of counsel for captors contends that the words "all captures made as prize" in section 4613, Revised Statutes, practically mean all captures made by a naval force, so that no captures made by a naval force of the United States, even on land, can inure to the benefit of the Government alone.

In addition to what has been said in the former brief, it may be noted that this contention really confounds "prize" and "capture." Every prize is a capture, just as every battle ship is a vessel, and every admiral is an officer; but the converse is no more true in one of these cases than in the others.

The term "capture" has a much broader meaning than "prize," as it covers every species of taking by either army or navy, where no compensation is contemplated. The following is a fairly complete definition:

> A capture, in technical language, is a taking by military power; a seizure, a taking by civil authority. (*United States* v. *Clark*, 35 Ga., 344, 351.)

A capture is "made as prize" when (and only when) it comes within the scope of the prize statutes as administered by the courts. The very words of section 4613, "all captures made as prize," intimate most clearly that there are other captures, and naval captures, too, which are not "made as prize."

The fundamental limitations of maritime prize can not be overthrown by any dictum culled from an opinion without reference to its context. Counsel for the captors (Brief p. 15–16) point to *Miller* v. *The Ship Resolution* (2 Dall., 1, 4), where it is said, "Prize is generally used as a technical term to express a legal capture," and they put this forward as conclusive that every legal capture is a prize. Now, the point before the court in that case was whether the original capture of a vessel and cargo by a British privateer (from whom they were subsequently captured by an American privateer) was legal or not; for if not, it had not changed the nationality of the captured property. The word "prize" had been used in the ordinance of Congress, and the court was pointing out that that word could not refer to an *illegal* capture. The idea that

every kind of legal capture was a prize was as far from the mind of the court as was the idea that every capture was legal; and it would be as reasonable to quote the dictum in support of the latter proposition as in support of the former.

In support of their theory that every species of property, wherever taken, captured by a naval force, is subject to adjudication in a court of admiralty, and therefore prize for the benefit of captors, counsel for captors (Brief, p. 64) quote a statement of the late Mr. Justice Gray, as follows:

> By the law of nations, as recognized and administered in this country, when movable property in the hands of the enemy, used, or intended to be used, for hostile purposes, is captured by land forces, the title passes to the captors as soon as they have reduced the property to firm possession; but when such property is captured by naval forces, a judicial decree of condemnation is usually necessary to complete the title of the captors. (*Oakes* v. *United States*, 174 U. S., 778, 786.)

The word "captors," where first used in the above sentence, obviously means "captor nation," because in this country a capture by land forces gives no private rights to those personally concerned in the taking; but where this word is used at the end of the sentence, it means, primarily at least, the persons concerned in the taking, the sense in which counsel, though arrayed against the captor nation, call themselves "counsel for captors." Whether Mr. Justice Gray, in using the word

the second time, intended it to refer to the captor nation at all is at least doubtful; but even if he did, the word "usually" implies that there are, though infrequently, cases of capture by a naval force where the title passes without a judicial decree of condemnation, and such cases, of course, are where the title passes to the captor nation and not to the individual captors.

What Mr. Justice Gray had in mind, however, is best seen by referring to the authorities which he cited in support of his statement. These are: 1 Kent's Commentaries, 102, 110; Halleck's International Law, c. 19, sec. 7; c. 30, sec. 4; and *Kirk* v. *Lynd* (106 U. S., 315, 317).

Those portions of Kent which are cited treat only of the question of the effect of a capture in divesting the captured property of the title of the original owner, and they only refer to an adjudication "when a prize is taken *at sea*." The cited portions of Halleck concern the rights of neutrals, and seem to bear but remotely on the subject. The opinion in *Kirk* v. *Lynd* does not expressly mention captures by naval forces, but uses language which would include them if made on land, for it says, "The title to movable property in hostile use, captured on land, passes to the captor as soon as it is complete; that is to say, as soon as the property is reduced to firm possession."

The conclusion to be drawn from these authorities is that enemy property captured on land does not, in the absence of any statute to that effect, require to be brought before a court for adjudication, and hence it is only fair to infer that when Mr. Justice Gray used the

words "captured by naval forces" he was thinking of such captures as "usually" are made, i. e., at sea.

Besides the provisions of Title LIV (the "Prize" title, sections 4613–4652), which obviously relates to maritime prize exclusively, the Revised Statutes also provide that property used, or permitted or intended to be used, in aid of any insurrection against the Government of the United States, or in aid of persons engaged in such insurrection, "shall be lawful subject of prize and capture wherever found," and that "such prizes and capture shall be condemned" in the proper court. (Sections 5308–5311.) Such property might of course be captured under such circumstances as to make it maritime prize, and presumably it was originally with reference to captures under such circumstances that the word "prize" was used; but it is expressly provided that even when taken on the inland waters of the United States the property shall *not* "be regarded as maritime prize," and *a fortiori* it could not be so regarded when taken on land.

As far as they go, therefore, sections 5308–5311 make against the contention that property captured on shore is maritime prize; but counsel for captors cite them (Brief p. 66) in support of that contention. They argue that because property taken on land under the insurrection laws must be condemned, therefore property taken on land in a foreign war must also be condemned; and further, that it must be condemned in a court of admiralty, and as prize, from which they conclude that the condemnation must be for the benefit of the captors. This argument involves at least three

instances of *non sequitur*. It does not follow at all that a practice expressly required by statute to be observed, in regard to property taken by naval, military, or civil force, at a time of insurrection, when the utmost care should be taken not to confound the innocent with the guilty, must also have been required by a statute which is silent on the subject, in the case of property captured in enemy's territory in a foreign war, and then *only* when such property is captured by a naval force. Furthermore, it does not follow that, if such condemnation were necessary, it would have to be in a court of admiralty; and lastly, it does not follow that even such a condemnation must necessarily be a condemnation in prize. The argument needs but to be fully stated to make manifest its fatal weakness.

It is true that sections 563 (paragraph 9) and 629 (paragraph 6) refer to property taken under the insurrection laws as "property taken as prize;" but even this rather loose use of the word "prize" does not aid the captors' argument. The proceedings referred to in sections 563 and 629 are not proceedings in admiralty, and section 5310 expressly states, in regard to property taken on inland waters, that it shall not be regarded as *maritime* prize. Moreover, as these proceedings under the insurrection laws are exclusively for the benefit of the United States, or the United States and the informer, and not for the benefit of the captors individually, the analogy fails at still another point.

The counsel for captors (Brief p. 66) also point to the act of March 3, 1899, chapter 413, section 13, abolishing prize money and bounty, as proof that there

must be a condemnation as prize even where the proceeds would go to the Government. It is true that under this act of 1899 the Government would seem to have succeeded to the former rights of the captors, and that in those cases in which formerly there was a condemnation for the benefit of the captors, or the Government and the captors, there would be a condemnation for the benefit of the Government alone. This, however, can not possibly affect cases in which previously no condemnation as prize was required, nor can it be tortured into a declaration that such condemnation had previouly been required in all cases of capture. It left the law just as it was before, except that it abolished the personal rights of captors.

In the brief of the counsel for the captors (p. 32) section 2 of the act of July 17, 1862, and the *first sentence* of section 10 of the act of June 30, 1864, are printed in parallel columns, as if to intimate that the purpose of section 10 of the act of 1864 was solely to substitute the words, "net proceeds of all property condemned as prize," for the words, "proceeds of all ships and vessels, and the goods taken on board of them, which shall be adjudged good prize," in the act of 1862. This use of a single sentence of section 10 of the act of 1864 is likely to be misleading, because the purpose of that section can not properly be understood unless the whole of it is compared with the corresponding provisions in the act of 1862.

The act of 1862 was "An act for the better government of the Navy of the United States," and the provisions in regard to prize were only incidental to its

main object. Other provisions were enacted in other statutes. The act of 1864, on the other hand, was "An act to regulate prize proceedings, and the distribution of prize money, and for other purposes." It was a codification of the prize law, previously found in several statutes. Section 10 takes the place of sections 2, 3, and 6, and of the act of 1862, and its purpose is best seen by comparing it with *all* of those sections.

ACT OF JULY 17, 1862.

SEC. 2. *And be it further enacted*, That the proceeds of all ships and vessels, and the goods taken on board of them, which shall be adjudged good prize, shall, when of equal or superior force to the vessel or vessels making the capture, be the sole property of the captors; and when of inferior force, shall be divided equally between the United States and the officers and men making the capture.

[The corresponding provision in the act of 1862 is found in the fourth subdivision of section 3 and in section 6.]

SEC. 3. *And be it further enacted*, That the prize money belonging to the officers and men shall be distributed in the following manner:

First. To the commanding officer of a fleet or squadron, one-twentieth

ACT OF JUNE 30, 1864.

SEC. 10. *And be it further enacted*, That the net proceeds of all property condemned as prize shall, when the prize was of superior or equal force to the vessel or vessels making the capture, be decreed to the captors; and when of inferior force, one-half shall be decreed to the United States and the other half to the captors: *Provided*, That, in the case of privateers and letters of marque, the whole shall be decreed to the captors, unless it shall be otherwise provided in the commissions issued to such vessels. All vessels of the navy within signal distance of the vessel or vessels making the capture, under such circumstances and in such condition as to be able to render effective aid if required, shall share in the prize, and in case of vessels not of the navy, none shall be entitled to share except the vessel or vessels making the capture, in which term shall be included vessels present at the capture and rendering actual assistance in the capture. All prize money adjudged to the captors shall be distributed in the following proportions, namely:

First. To the commanding officer of a fleet or squadron, one-twentieth

part of all prize money awarded to a vessel or vessels under his immediate command.

Second. To the commander of a single ship, one-tenth part of all prize money awarded to the ship under his command, if such ship, at the time of making the capture, was under the immediate command of the commanding officer of a fleet or squadron, and three-twentieths if his ship was acting independently of such superior officer.

Third. The share of the commanding officer of the fleet or squadron, if any, and the share of the commander of the ship being deducted, the residue shall be distributed and apportioned among all the others doing duty on board, and borne upon the books, according to their respective rates of pay in the service.

Fourth. When one or more vessels of the Navy shall be within signal distance of another making a prize, all shall share in the prize, and money awarded shall be apportioned among the officers and men of the several vessels, according to the rates of pay of all on board who are borne upon the books, after deducting one-twentieth to the flag-officer, if there be any such entitled to share.

Fifth. No commander of a fleet or squadron shall be entitled to receive any share of prizes taken by vessels not under his immediate command; nor of such prizes as may have been taken by ships or vessels intended to be placed under his command, before they have acted under his immediate orders; nor shall a commander of a fleet or squadron, leaving the station where he had command, have any share in the prizes taken by ships left on such station

part of all the prize money awarded to any vessel or vessels under his immediate command.

Second. To the commanding officer of a division of a fleet or squadron, on duty under the orders of the commander in chief of such fleet or squadron, a sum equal to one-fiftieth part of any prize money awarded to a vessel of such division for a capture made while under his command, the said fiftieth part to be deducted from the moiety due to the United States, if there be such moiety, otherwise from the amount awarded to the captors: *Provided*, That such fiftieth part shall not be in addition to any share which may be due to the commander of the division, and which he may elect to receive, as commander of a single ship making or assisting in the capture.

Third. To the fleet captain, one-hundredth part of all prize money awarded to any vessel or vessels of the fleet or squadron in which he is serving, except in a case where the capture is made by the vessel on board of which he is serving at the time of such capture; and in such case he shall share, in proportion to his pay, with the other officers and men on board such vessel, as is hereinafter provided.

Fourth. To the commander of a single ship, one-tenth part of all the prize money awarded to the ship under his command, if such ship at the time of the capture was under the command of a commanding officer of a fleet or squadron, or a division, and three-twentieths if his ship was acting independently of such superior officer.

Fifth. After the foregoing deductions, the residue shall be distributed and proportioned among all

after he has gone out of the limits of his said command, nor after he has transferred his command to a successor.

Sixth. No officer or other person who shall have been temporarily absent on duty from the vessel, on the books of which he continued to be borne while so absent, shall be deprived, in consequence of such absence, of any prize money to which he would otherwise be entitled.

SEC. 6. *And be it further enacted*, That any armed vessel in the service of the United States which shall make a capture, or assist in a capture, under circumstances which would entitle a vessel of the Navy to prize money, shall be entitled to an award of prize money in the same manner as if such vessel belonged to the Navy; and such prize money shall be distributed and apportioned in the same manner and under the same rules and regulations as provided for persons in the naval service, and paid under the direction of the Secretary of the Navy.

others doing duty on board (including the fleet captain) and borne upon the books of the ship, in proportion to their respective rates of pay in the service.

No commanding officer of a fleet or squadron shall be entitled to receive any share of prizes captured by any vessel or vessels not under his command, nor of such prizes as may have been captured by any ships or vessels intended to be placed under his command, before they have acted under his orders. Nor shall the commanding officer of a fleet or squadron, leaving the station where he had command, have any share in the prizes taken by ships left on such station after he has gone out of the limits of his said command, nor after he has transferred his command to his successor. No officer or other person who shall have been temporarily absent on duty from a vessel on the books of which he continued to be borne, while so absent, shall be deprived, in consequence of such absence, of any prize money to which he would otherwise be entitled. And he shall continue to share in the captures of the vessels to which he is attached until regularly discharged therefrom.

Passing by, for a moment, the first sentence of section 10 of the act of 1864, it is seen that the section restricts slightly the rights of vessels within signal distance, especially vessels not belonging to the Navy, and also that it gives the commander of a division of a fleet or squadron, and the fleet captain, special shares in the distribution. The actual changes in the provisions of the law are not very important, but there are also a number of verbal changes, here and there,

which do not seem to alter the provisions at all. Evidently those who drafted the act of 1864, and threw sections 2, 3, and 6 of the act of 1862 into a single section, thought that they could improve on the language of their predecessors, even where they retained the substance of the earlier statute. In the first sentence of section 10 this same desire to improve the language of the law is evident, and the awkward wording of section 2 of the act of 1862 (where the words "when of equal or superior force," should, by the ordinary rules of construction, refer to "proceeds," although, of course, they were meant to refer to "ships and vessels") justified the attempt. In making this change of wording the seventeen words, "ships and vessels and the goods taken on board of them, which shall be adjudged good prize," were replaced by the four words, "property condemned as prize," evidently to avoid prolixity, and for no other purpose. The change was justified by authority, for even in England Lord Stowell had said "I know of no other definition of prize goods than that they are goods taken on the high seas, *jure belli*, out of the hands of the enemy." It was simply the substitution of a shorter phrase for a longer one, the two having had the same meaning ever since the beginning of the Revolution. Up to the time when the words "property condemned as prize" were used in the act of 1864, no property could lawfully have been condemned as prize except "ships and vessels, and the goods taken on board of them;" so that the

word "prize" was, in the United States, inseparably connected in men's minds with the idea of a capture on the water; and Congress would have been astounded if it had been told in 1864 that it had abandoned the established American rule, and the generally accepted law of nations, substituting in its place a practice authorized only by special commissions and temporary statutes in England, and manifestly not contemplated by the other provisions of the act of 1864.

In regard to American authorities prior to the passage of the act of 1864, the position of the counsel for captors is peculiar. They not merely overlook the fact that the decision in *Mrs. Alexander's Cotton* (2 Wall., 404) was in regard to a section which had been on the statute books, in the identical words, from April 23, 1800, so that the decision must be taken as a statement of the law as it had existed from that date; but they also seem to think that prior decisions in the district court, in direct conflict with *Mrs. Alexander's Cotton*, and clearly overruled by that case, may still be cited as authority!

In regard to *Brown* v. *United States* (8 Cr., 110), they say (p. 62):

> But Chief Justice Marshall does not question the principle laid down by Justice Story, that the admiralty takes jurisdiction of captures made on land by a naval force.

A similar statement is made on page 41.

Bearing in mind the fact that section 5 of the act of April 23, 1800, which was in force when *Brown* v

United States was decided, was identical with the section construed in *Mrs. Alexander's Cotton*, which held that property captured on land by a naval force was "not maritime prize, and should have been turned over to the agents of the Treasury Department," instead of to the control of a court of admiralty, it is clear that even if Chief Justice Marshall did not think it necessary to pronounce as to whether the admiralty took jurisdiction of captures made on land by a naval force, he can not be *presumed* to have been of an opinion which this court has held to be erroneous. The late Mr. Justice Miller, however, who was on the bench when *Mrs. Alexander's Cotton* was decided, took an entirely different view of what Chief Justice Marshall meant to decide in *Brown* v. *United States*, for he said:

> The great judge, and the court for whom he spoke, proceeds upon the doctrine of the definition of Sir William Scott, quoted above. ["I know of no other definition of prize goods than that they are goods taken on the high seas, *jure belli*, out of the hands of the enemy."] The property in question [in *Brown* v. *United States*] was not captured on the high seas, and, although it had been but imperfectly landed, yet *as it had been placed beyond the action of the water*, it was removed from the prize jurisdiction. Mr. Justice Story, in his dissent, insists that the jurisdiction extends to captures on land by a naval force. And it is in this, as well as in several other positions of his very learned opinion, that he is overruled by the court. (*United States* v. *269½ Bales of Cotton*, 1 Woolw., 236; 28 Fed. Cas., 302, 309.)

In view of the fact that Mr. Justice Miller's opinion was rendered in October, 1868, more than four years after the act of 1864 was passed, it is manifest that with his decided views as to the total overruling of Story in *Brown* v. *United States*, he would have stated that the act of 1864 had established Story's view if he had believed that such was the case.

Of course Mr. Justice Miller's statement is merely *obiter*, and counsel for captors can not be debarred from contending, as they obviously wish the court to infer, that if Chief Justice Marshall had been alive in 1864 he would have dissented from the decision in *Mrs. Alexander's Cotton;* but it is at least interesting to note that one of the judges who decided that case believed that its doctrine was the same that Marshall had held.

The same broad view of what was meant by *Brown* v. *United States* seems to have been held by the late Mr. Justice Gray, when he referred to it as a "decision that enemy property on land, which by the modern usage of nations is not subject to capture as prize of war, can not be condemned by a prize court, even by direction of the Executive, without express authority from Congress." (*The Paquete Habana*, 175 U. S., 677, 711.) His habitual clearness of statement makes it certain that if he had meant "except when taken by a naval force," he would have said so.

In the brief for the United States (p. 126) it was stated that the decision in *Mrs. Alexander's Cotton* had overruled the earlier district court case of *1,253 Bags of Rice* (Blatch. Pr. Cas., 211; 18 Fed. Cas., 723). To

speak with absolute precision, the title of the overruled case was *103 Casks of Rice*. The two cases were decided at the same time, and the district judge disposed of them both in the same opinion. As a matter of fact, his decision was correct in *1,253 Bags of Rice*, that property having been taken "afloat, in an enemy port," but in *103 Casks of Rice* the decision was clearly wrong, as the casks were taken on shore. This decision was manifestly overruled by *Mrs. Alexander's Cotton*.

In spite of the fact that *Mrs. Alexander's Cotton* was not merely a later decision, but one of a higher tribunal, the brief for the captors (p. 62) actually calls attention to *103 Casks of Rice* as "a case that squarely maintains our [i. e., the captors'] proposition, and which has never been overruled." This extraordinary statement can hardly be a mere printer's error, but the fact that it is erroneous does not need the support of any argument, certainly not in this court.

This overruled decision is again cited as authority (this time under the title of *1,253 Bags of Rice*), together with the two other overruled cases, on pages 41–43 of the brief of counsel for captors.

On page 64 the counsel for captors cite the following as an authority:

> The jurisdiction of these courts [i. e., the courts of admiralty] extends as well to goods taken on land by a naval force, or in consequence of the operations of a naval force, as to property captured on the water. (Wheaton on Captures, 278.)

Wheaton's treatise was published in 1815, and the statement just quoted is wholly based upon Lord Mansfield's statement in *Linds* v. *Rodney* (2 Doug., 613), and other English authorities, all of them supported merely by the special commissions and temporary statutes of Great Britain. It was not the law of the United States at that time, for the section which was judicially construed by this court in *Mrs. Alexander's Cotton* had been in force, word for word, since 1800, and that case decided not merely that property captured on land was not prize for the benefit of captors, but that it was not with the jurisdiction of a court of admiralty. Whether Mr. Wheaton thought that his statement was, or ought to be, true of the United States is immaterial. Very possibly he did, as he was much influenced by Judge Story's views; but as the decision in *Mrs. Alexander's Cotton* was diametrically opposed to those views on this point, they can have no weight as authority.

In support of the indisputable proposition that the English law of prize, "so far as it is adapted to the altered circumstances and conditions of the country, and has not been modified by the proper national authorities," has continued to be our law, counsel for captors (Brief, p. 40) cite, among other cases, *30 Hogsheads of Sugar* v. *Boyle* (9 Cr., 191, 198). What was said by Chief Justice Marshall in that case is worth quoting. He said:

> It will not be advanced, in consequence of this former relation between the two countries, that any obvious misconstruction of public law

made by the British courts will be considered as forming a rule for the American courts, or that any recent rule of the British courts is entitled to more respect than the recent rules of other countries. But a case professing to be decided on ancient principles will not be entirely disregarded, unless it be very unreasonable, or be founded on a construction rejected by other nations.

The British rule which treated booty captured by a naval force as prize (in so far as the operation of special commissions and temporary statutes can be a rule at all) was, it is submitted, at variance with public law as adopted by other nations, and therefore, by the above doctrine, it would not properly have been followed by our courts even if a statute had not prevented it.

In seeking to introduce this British rule, however, counsel for captors fail to consider the effect of the previous action of Congress. Granting that if Congress had never acted in regard to booty captured by a naval force, and had never passed laws which prevented such captures from being treated as prize, the English rule might have prevailed. The fact remains that Congress did pass such laws from the very first. If Congress, in 1864, had simply repealed every statute and portion of a statute in regard to prize, could it have been contended that such repeal would have made effective in the United States the English prize laws which had been in force before the Revolution, laws which had themselves expired years ago, and which had

been succeeded by others on the breaking out of other wars, with which we had had nothing to do, except possibly as enemies? Such a contention would be the height of absurdity. A simple repeal of all prize statutes would have put an end to prize, and nothing would have taken their place. If, therefore, the British prize law could not be impliedly reestablished in this country by a mere repeal of our own laws, neither could any part of it be impliedly reestablished by a mere change in the wording of our laws. Whatever was the intention of Congress in 1864, one thing is certain, the old British rule (if it was a rule), which our statutes had excluded from the first, could not possibly have been reestablished by implication.

In connection with the attempt to hold the small nonseagoing craft as maritime prize, counsel for captors (Brief, p. 74) point to section 3 of the Revised Statutes defining the word "vessel" as every description of water craft capable of being used as a means of transportation. It can not be denied that the Filipino cascos, and even the wrecking boats, were vessels, but it does not follow that they were such vessels as to be within the prize act. The only vessels with which the statutes under the title "Prize" have to deal are obviously ships or other craft such as are capable of going to sea and are ordinarily provided with documents.

The fact that these small craft were not covered by the libel as originally filed is attempted to be explained by the fact that it was filed before Admiral Dewey

had reached this country (brief, p. 76); but this explanation does not account for the fact that when the board of appraisal, in June, 1898, undertook to appraise every piece of Spanish property appropriated up to that time, which they claimed as prize, they did not include these boats, though they did include all the boats at the arsenal or belonging to the wrecks. Neither does it account for the fact that no appraisal of these Filipino craft as prize property was ever made. The only explanation is that the Admiral and his officers never thought of regarding them as prize.

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IN THE

Supreme Court of the United States.

The Manila Bay Prize Cases.

THE UNITED STATES, *Appellant*,
v.
GEORGE DEWEY, Admiral, U. S. N. } No. 309.

GEORGE DEWEY, Admiral, U. S. N., *Appellant*,
v.
THE DON JUAN DE AUSTRIA *et al.* } No. 310.

EDWIN F. STOVELL, *Appellant*,
v.
GEORGE DEWEY, Admiral, U. S. N. } No. 311.

BRIEF OF COUNSEL FOR CAPTORS.

The Appeals.

These are appeals from the decree of the Supreme Court of the District of Columbia upon the libel of Admiral Dewey, claiming condemnation of property captured at the battle of Manila Bay, May 1, 1898. The decree condemned a portion and released a portion of the property. Both parties have appealed.

The court below, by the same decree, denied the right of certain intervenors to share in the prize. A third appeal is prosecuted in their behalf. Except as to these parties, the decree below did not consider questions of distribution, following in this respect the usual procedure in prize causes.

The Procedure.

Proceedings in prize causes are governed by Revised Statutes, Chapter LIV, §§ 4613–4652. The material sections of this chapter are inserted in this brief hereafter.

In ordinary cases, the prize property is delivered by the captors to the custody of the prize court and proceedings for condemnation are undertaken by the United States. The issues rest on the proceedings for condemnation and are usually between the United States, appearing both on its own behalf and on behalf of the captors, and adverse parties resisting condemnation.

In the present case, the property captured was all appropriated by the United States, as permitted by law. (R. S. §§ 4624 and 4625.) Application was made by the captors to the Secretary of the Navy to proceed in condemnation of this property as prize, but the government failed to do this, and thereupon, under the authority granted by § 4625, the libellant, as commander-in-chief of the capturing force, himself instituted a libel, praying the condemnation of the property which had been taken by the United States. The United States, by whom the prize money will ultimately be payable to the captors as a result of the decree of condemnation, out of the property appropriated for public use, appears as party defendant, resisting the condemnation. The answer of the United States is a general denial that the property claimed, with a certain exception, which will hereafter appear, is properly subject to condemnation as prize.

The chief precedent in this form of action is the case of *David G. Farragut, Admiral, U. S. N.* v. *The Ship Metropolis*, brought, like this case, in the Supreme Court of the District of Columbia and reported in this court as *United States* v. *Farragut*, 22 Wall. 406. So far as possible, the procedure in that case has been followed in this.

Statement of Case.

When Admiral Dewey and the American fleet under his command won the battle of Manila Bay, May 1, 1898, a considerable quantity of enemy property was captured, and the object of this libel is to secure its condemnation as prize. The property consisted of the following classes, separately forming the subject of consideration:

(1) Property captured afloat, including various vessels, their equipments and cargoes.

(2) Three of the enemy's vessels of war which, as a result of the battle, were sunk in shallow water and remained partly immersed until raised by the United States and refitted. These are now in the United States Navy.

(3) Property taken from vessels which were sunk or otherwise destroyed.

(4) Property captured on shore, consisting of naval supplies in the naval station at Cavite.

(5) Certain cargo boats and wrecking boats, the private property of Spanish subjects, taken by the Navy and used in the operations of war.

The court below condemned the first three classes, but released the last two. Both parties have appealed.

Assignment of Error.

For error, the libellant avers that the court erred in the following particulars:

(1) In holding that the property captured by the fleet under libellant's command, situated ashore at the naval station at Cavite, is not lawful prize of war, subject to condemnation and distribution to the captors.

(2) In holding that the cargo boats and wrecking boats captured from subjects of Spain are not lawful prize of war, subject to condemnation and distribution to the captors.

ARGUMENT.

The Facts.

The consideration of the case will be greatly aided by an exact statement of the facts contended for on behalf of the captors. The facts believed to be established by the evidence are as follows:

[The references by pages to the record in this case are designated Rec.; those to the Appendix to the Report of the Bureau of Navigation for 1898, Vol. II of the Report of the Secretary of the Navy, are designated App.]

1. On May 1, 1898, a state of war existed between the United States and the King of Spain, and the libellant was in command of the United States naval force on the Asiatic Station (Rec. ix; App. 65).

2. An engagement took place on that date between the naval force of the United States, under command of the libellant, and a Spanish fleet consisting of the *Reina Cristina*, *Castilla*, *Don Antonio de Ulloa*, *General Lezo*, *Marques del Duero*, *Argos*, *Velasco*, *Isla de Mindanao*, *Don Juan de Austria*, *Isla de Cuba*, *Isla de Luzon* and *Manila*, supported by shore batteries, submarine mines and torpedoes, resulting in the defeat of the Spanish forces (Rec. ix; App. 69; Findings of the Court of Claims).

3. The *Don Juan de Austria*, *Isla de Cuba* and *Isla de Luzon*, under the severe gun fire of the American fleet, steamed to a position of greater safety, and still entirely perfect, so far as flotation was concerned, after the battle, dropped anchor, backed ashore, and when in shallow water opened the sea-valves and settled on the bottom (App. 81, 92; Rec. 59). The upper works were afterward, under orders of Admiral Dewey, set on fire by a detachment from the United States fleet (App. 71, 81, 83).

4. The condition of the three vessels named after the battle was as follows:

Don Juan de Austria.—The forward end of the main deck was about three feet above water and the after end about three feet below water at low tide (Rec. 134, 58). The soundings showed from fourteen to fifteen feet of water (Rec. 136).

Isla de Cuba.—The forward end of the main deck was about three feet out of water and the after end two feet below water at low tide (Rec. 134, 135, 58). The soundings were eight to ten feet at low tide (Rec. 135).

Isla de Luzon.—The forward end of the main deck was about one foot below water, and the after end about four feet above water at low tide (Rec. 134, 58). The soundings showed twelve to fifteen feet of water (Rec. 136).

The principal damage on all three vessels was done by fire, which, in consuming the wood-work, caused heavy warping and buckling on the adjacent metal-work. On all three vessels the fire was limited principally to the part from bridge-house to stern, extending from poop to berth deck. On the *Don Juan de Austria* some damage was done by shot, though not of sufficient consequence to be specified; on the *Isla de Cuba* and the *Isla de Luzon* the damage from this cause was unimportant.

The following specified conditions pertain to the *Isla de Luzon*, but may be taken generally as applicable also to the *Isla de Cuba*:

Hull-work.—Skin plating and framing was scorched, warped, and buckled from near the water line upwards, along stern and along both sides to about abreast the boiler hatch. Most of the plating and some of the framing in the region of the poop was in such condition that when the vessel was refitted it had to be removed and straightened, and some of it renewed from the berth deck upward, and part of the plating of the hammock berthing had to be removed and straightened as far as the break of the forecastle.

For decking, the wood flat was burned away on poop and on main deck from the stern to the break of the forecastle. The heat caused severe warping of the plates, hatch combings, deck stringers, and deck beams, causing the beams to collapse in many cases, particularly on the poop. It was noticeable that the metal flat beneath the wood flat caused complete protection for the beams beneath it in the part where it extended over the upper coal bunkers.

The forecastle deck was unburned.

For bulkheading, the structural bulkheads were more or less intact, requiring partial renewal in the case of a few individual plates. The upper coal-bunker bulkheads were warped, and in some cases badly corroded, requiring to be taken off, straightened, and to be partially renewed. All stateroom bulkheading was completely consumed and store-room bulkheading and battening below the berth deck, as in general with wood-work, were rendered useless. The water-tight doors of bulkheads were in fair condition, requiring cleaning.

Machinery.—The main engines were in good condition, and the main boilers were in only fair condition, due principally to use and neglect in service.

The auxiliary machinery was in fair condition. All engines and machinery suffered such damage by submersion as to require complete overhauling and some renewal before going into service.

The condition of the *Don Juan de Austria* was similar to that of the *Isla de Cuba* and *Isla de Luzon*, with the following principal differences:

The effect of fire was more pronounced, main-deck and poop-deck beams having sunk in more extensively.

The boilers required extensive repairs. The effect of corrosion in general was less pronounced than in the other two vessels, due in part, no doubt, to the fact that this vessel is of iron and has much heavier scantlings.

(The foregoing is taken from the report of Constructor Hobson, Rec. 137–139. Constructor Capps in his testimony, Rec. 56, 57, makes a similar statement but not in so great detail. Chief-Engineer Hall makes a similar general statement, Rec. 10.)

5. At as early a date as possible an examination was made of the *Don Juan de Austria*, *Isla de Cuba* and *Isla de Luzon*, and it was determined that it would be profitable to raise and restore them (Rec. 56, 57, 135). A contract was made by the United States, through Naval Constructor Washington L. Capps, who had been sent to Manila by the Secretary of the Navy (Rec. 56), and the Hong Kong & Whampoa Dock Company for raising and repairing and fitting out the three vessels named (Rec. 57, 135). This contract was signed on behalf of the United States by the commander-in-chief, and a copy forwarded to the Navy Department (Rec. 57, 135). The wrecking outfit was not such as could be gotten here, but consisted only of pumps, and the ordinary materials to be had in any first-class ship-chandler's establishment, and men (Rec. 59).

6. On October 29, work began on the *Isla de Cuba* (Rec. 135), and on November 7 she was gotten completely off (Rec. 136). On November 1, work began on the *Isla de Luzon* (Rec. 136), and on the 15th she was floated (Rec. 136). On the 1st of November work began on the *Don Juan de Austria* (Rec. 136), and she was floated on the 23d (Rec. 136). All three vessels were hauled upon the slip at the Cavite Naval Station (Rec. 136), and preliminary work done upon them (Rec. 136). In December, 1898, and January, 1899, they went to Hong Kong under their own steam (Rec. 57, 58, 136, 137).

7. They were completely restored and refitted and upon the conclusion of the work upon them were taken into the United States Navy, and are now upon the United

States Naval Register officered and manned by the officers and men of the United States Navy (Rec. 129–131, 132, 141; U. S. Naval Register, 1901).

8. The work done on the vessels was done under the control and direction of the Secretary of the Navy (Rec. 56, 60), and the vessels, while still in the water, were taken for and appropriated to the use of the United States (conclusion of fact from foregoing facts).

9. Other vessels and their fittings and supplies, including coal, were captured at the time while still afloat, and were taken for and appropriated to the use of the United States (Rec. 7, 8, 20). The vessels so taken included the *Manila* (App. 72, 81, Rec. 20), *Callao*, *Leyte*, *Mindanao*, *Rapido* (App. 81, 83), *Hercules* (App. 81, 83) and others (Rec. 122, 123, 7, 21, 82, 83).

10. All the vessels named in paragraph 2 above, excepting the *Don Juan de Austria*, *Isla de Cuba*, *Isla de Luzon* and *Manila*, were destroyed as the result of this engagement, by gun-fire, by internal explosions, by being run ashore or by sinking (App. 71, 72, 97; Rec. 134, 135; Findings of Court of Claims, Rec. 167).

11. As a result of the Battle of Manila Bay, the libellant and the force under his command captured the Spanish Naval Station of Cavite on Manila Bay (App. 71, Rec. 2). This station was used for building, repairing, supplying and refitting naval vessels and contained a large quantity of naval stores, also captured, intended for these purposes (Rec. 2, 3, 13, 30, 32, 33, 37, 44–48, 64–68, 76, 86, 100–106). It had been under the control of the Spanish naval authorities (App. 93; Rec. 2).

12. A portion of these stores was immediately taken on board the vessels comprising the libellant's fleet, and used for naval purposes on board said vessels—these including ordnance materials, fuel, electric apparatus, miscellaneous instruments, machinery and machine tools

paints and oils, and many other articles (Rec. 3, 4–8, 10).

13. By command of the libellant officers of his fleet were detached to take charge of the Naval Station and works of equipment and repair were begun and continuously carried on at said station, both on shore and on the vessels of the fleet, using the materials on hand (Rec. 9, 19, 29, 31, 39, 41, 64, 70, 71, 97). During the early part of these proceedings, and until about the middle of July, 1898 (Rec. 30, 42, 95), no other than the Spanish stores were available for such work (Rec. 30, 42, 95). Stores were sent out from the United States or purchased in Hong Kong from time to time, as needed for naval purposes at this yard (Rec. 30, 35, 95, 98), but the use of the Spanish stores continued until January, 1901, without interruption (Rec. 19, 30, 42, 54, 72–74).

14. A board of officers was appointed by the libellant on the 4th of June, 1898, to survey, appraise and inventory the enemy's property captured and appropriated for the use of the United States under § 4624 of the Revised Statutes (Rec. 113). This board made an appraisal, including in it the following classes of property, and no others (Rec. 77): (1) The vessels, their fittings and cargoes, captured afloat (Rec. 7, 8, 76, 122, 123); (2) such stores and supplies found ashore in the Naval Station as had been, during the month of May, removed on board the vessels of the fleet (Rec. 3, 4, 5, 8, 11, 70, 76, 78). The total appraised value of these classes of property, as found by the board, was $326,141.89 (Rec. 125).

The property captured ashore, not included in the appraisement aforesaid, was appropriated to the use of the United States as aforesaid (Rec. 8, 9, 11, 12, 31, 54, 97). It was never appraised or inventoried (Rec. 4, 8, 31, 41, 64, 96).

15. Besides the vessels and stores referred to in the foregoing paragraphs there were captured twelve cascos

or cargo boats, and two wrecking boats. These were also appropriated to the use of the United States, but were not appraised.

(Chief Engineer Hall says, Rec. 23, 8 or 10 at first and 20 altogether; Lieutenant Hodges, Rec. 69, says 5 at the time of the battle and 7 more before the arrival of the troops and 15 more later. The 12 were not paid for; the 15 were appraised and paid for. He describes the wrecking boats. Eleven of the 12 cascos, Rec. 74, were wrecked in use. Lieutenant-Commander Calkins captured 5 cascos, Rec. 76. They were used for carrying freight and troops, Rec. 79.)

16. Actions were instituted for bounty under § 4635 of the Revised Statutes on account of all the vessels named in the second paragraph hereof other than the *Don Juan de Austria*, *Isla de Cuba*, *Isla de Luzon*, and *Manila*, and bounty has been granted under that section for the destruction of said vessels (see opinion of Court of Claims, *Dewey* v. *United States*, 35 C. Cls. 172; and of this court, 178 U. S. 210) and paid (H. R. Doc. 354, 56th Cong. 2d Sess.; 31 Stat. L. 1052).

17. The vessels taking part in this engagement on behalf of the United States were the *Olympia*, *Baltimore*, *Boston*, *Raleigh*, *Concord* and *Petrel* (App. 70). The *McCulloch* was in signal distance of the capture under such circumstances, and in such condition, as to be able to render effective aid if required (App. 86, 105). The *Nanshan* and *Zafiro* were in signal distance, but were supply vessels armed only with one-pounders, and were not present under such circumstances, and in such condition, as to be able to render effective aid, if required. (See discussion of this subject, forming the concluding portion of this brief.)

18. The American vessels engaged in the battle, and their armaments, were of superior force to the Spanish

vessels captured and destroyed. The American vessels engaged in the battle were of inferior force to the entire Spanish force engaged, including vessels, the shore defences and the torpedoes and submarine mines (Findings of Court of Claims, 35 C. Cls. 178).

19. The appropriation to the use of the United States of the *Don Juan de Austria*, *Isla de Cuba*, and *Isla de Luzon*, and of the other vessels captured afloat, and their cargoes and fittings, and of the naval stores captured ashore, prevented any part of it being sent in for adjudication to any District Court of the United States. The Secretary of the Navy did not within three months after the capture designate a district for the institution of proceedings (Libel, par. 7, p. iv; Ans. par. 7, p x).

20. A portion of the stores captured at the arsenal at Cavite were afterward returned to Spain, under the provisions of Article V of the Treaty of Peace, proclaimed April 11, 1899, 30 Stat. L. 1757.

The Statutes.

The statutes affecting this case are all found in Chapter LIV of the Revised Statutes, the provisions of which are nearly all reenactments of the act of June 30, 1864 13 Stat. L. 306. The following sections are chiefly material:

§ 4613. "The provisions of this Title shall apply to all captures made as prize by authority of the United States, or adopted and ratified by the President of the United States."

§ 4624. "Whenever any captured vessel, arms, munitions, or other material are taken for the use of the United States before it comes into the custody of the prize court, it shall be surveyed, appraised, and inventoried, by persons as competent and impartial as can be obtained, and the survey, appraisement and inventory shall be sent to the court in which proceedings are to be

had; and if taken afterward, sufficient notice shall first be given to enable the court to have the property appraised for the protection of the rights of the claimants and captors. In all cases of prize-property taken for or appropriated to the use of the Government, the Department for whose use it is taken or appropriated shall deposit the value thereof with the assistant treasurer of the United States nearest to the place of the session of the court, subject to the order of the court in the cause."

§ 4625. "If by reason of the condition of the captured property, or if because the whole has been appropriated to the use of the United States, no part of it has been or can be sent in for adjudication, or if the property has been entirely lost or destroyed, proceedings for adjudication may be commenced in any district the Secretary of the Navy may designate; and in any such case the proceeds of anything sold, or the value of anything taken or appropriated for the use of the United States, shall be deposited with the assistant treasurer in or nearest to that district, subject to the order of the court in the cause. If, when no property can be sent in for adjudication, the Secretary of the Navy shall not, within three months after any capture, designate a district for the insitution of proceedings, the captors may institute proceedings for adjudication in any district. And if in any case of capture no proceedings for adjudication are commenced within a reasonable time, any parties claiming the captured property may, in any district court as a court of prize, move for a monition to show cause why such proceedings shall not be commenced, or institute an original suit in such court for restitution, and the monition issued in either case shall be served on the attorney of the United States for the district, and on the Secretary of the Navy, as well as on such other persons as the court shall order to be notified."

§ 4630. "The net proceeds of all property condemned as prize, shall, when the prize was of superior or equal force to the vessel or vessels making the capture, be decreed to the captors; and when of inferior force, one-half shall be decreed to the United States and the other half to the captors, except that in case of privateers and letters

of marque, the whole shall be decreed to the captors, unless it shall be otherwise provided in the commissions issued to such vessels."

§ 4634. "Whenever a decree of condemnation is rendered, the court shall consider the claims of all vessels to participate in the proceeds, and for that purpose shall, at as early a stage of the cause as possible, order testimony to be taken tending to show what part should be awarded to the captors, and what vessels are entitled to share; and such testimony may be sworn to before any judge or commissioner of the courts of the United States, consul or commercial agent of the United States, or notary public, or any officer of the Navy highest in rank reasonably accessible to the deponent. The court shall make a decree of distribution, determining what vessels are entitled to share in the prize, and whether the prize was of superior, equal, or inferior force to the vessel or vessels making the capture. The decree shall recite the amount of the gross proceeds of the prize subject to the order of the court, and the amount deducted therefrom for costs and expenses, and the amount remaining for distribution, and whether the whole of such residue is to go to the captors, or one-half to the captors, and one-half to the United States."

§ 4635. "A bounty shall be paid by the United States for each person on board any ship or vessel of war belonging to an enemy at the commencement of an engagement, which is sunk or otherwise destroyed in such engagement by any ship or vessel belonging to the United States or which it may be necessary to destroy in consequence of injuries sustained in action, of one hundred dollars, if the enemy's vessel was of inferior force, and of two hundred dollars, if of equal or superior force, to be divided among the officers and crew in the same manner as prize-money; and when the actual number of men on board any such vessel can not be satisfactorily ascertained, it shall be estimated according to the complement allowed to vessels of its class in the navy of the United States; and there shall be paid as bounty to the captors of any vessel of war captured from an enemy, which they may be instructed to destroy, or which is immediately de-

stroyed for the public interest, but not in consequence of injuries received in action, fifty dollars for every person who shall be on board at the time of such capture."

The Issues.

The issues involved on these appeals are only of law. The claim is based, as may be seen from the statement of fact above made, upon five different classes of prize property:

(1) Public vessels and their equipment and the goods upon them, belonging to the King of Spain, captured afloat and taken into the United States service and appraised.

(2) Vessels grounded in the battle and afterward raised—the *Don Juan de Austria*, the *Isla de Cuba* and the *Isla de Luzon*.

(3) Property taken from sunken vessels.

(4) Naval stores captured ashore at the navy yard. These are subject to a division into stores actually consumed in the United States service and stores recently returned to Spain. Part of those consumed were appraised and part were used without appraisal.

(5) Cascos or cargo boats, the property of subjects of the King of Spain.

The United States concede that the first class of prize property, public vessels of war captured afloat, their outfits and supplies, are rightly the subject of prize, and that a decree must be entered in favor of the libellant for these. The questions now to be discussed are:

1. Are the *Don Juan de Austria*, the *Isla de Cuba* and the *Isla de Luzon* prize?

2. Is the property taken from sunken vessels prize?

3. Is the property captured ashore prize? If so, is the property restored to Spain to be excluded?

4. Are the cascos prize?

We will take up these points in their order.

I. ARE THE *DON JUAN DE AUSTRIA, ISLA DE CUBA* AND *ISLA DE LUZON* PRIZE?

The facts have been quite fully stated above and references given to the evidence. It appears that at the close of the engagement at Manila Bay these three vessels were entirely perfect, so far as flotation was concerned, and that the Spaniards themselves ran them into shallow water and opened all the sea connections, letting them settle there; that the vessels, left in this condition, were immersed above the ordinary water-line, though one end of each of the vessels was well above water at low tide; that as they rested it was apparent that they could be floated and when raised would be of value, and that there was a marked difference between their condition and that of the vessels that were destroyed (Rec. 60). Under these circumstances the vessels were taken by and appropriated to the use of the United States. After an examination of their condition by a naval officer sent from the United States for the purpose, and report of the same made to the Navy Department in Washington, it was decided that the vessels were worth raising, and the United States, with a wrecking outfit crude in comparison with what could have been secured here on the Atlantic Coast, consisting only of pumps and the ordinary materials that can be found in a first-class ship-chandler's establishment, and men, closed the valves, pumped the water out and floated the vessels, after which they were taken to Hong Kong under their own steam, there repaired, and are now vessels of war of the United States Navy.

Capture the First Essential.

"Prize is generally used as a technical term to express a legal capture," said the Federal Court of Appeals in

Miller v. *The Ship Resolution* (2 Dallas, 4). The first section of Title LIV of the Revised Statutes, § 4613, says: "The provisions of this title shall apply to all captures made as prize." § 4615 refers to the "vessel making the capture" and to the "captured property." So throughout the title in regard to prize, the word "capture" appears everywhere, in §§ 4616, 4617, 4624, 4625 and numerous other sections, as indicating the first essential of prize.

In order to sustain a libel in prize, it is first necessary to show a capture.

Were These Vessels Captured?

To a capture these things are necessary:

(*a*) A subject of capture—here the enemy's vessel.

(*b*) A capturing force—here the libellant's fleet.

(*c*) The taking of the subject of capture from the possession of the enemy into the possession of the captors—here accomplished by taking complete control of the vessels, the waters in which they were left and the adjacent lands.

That the control was complete is shown by the fact that the vessels were raised, floated and repaired, and are now in the United States Navy.

After the battle of Manila was over, these vessels were no longer in the possession of the Spaniards; they were in the possession of the fleet of the United States. They were taken from the Spaniards by the United States Navy; they were under the control of these captors. It is true that they were in such condition that some labor and skill was required to move them and make them fighting machines again, yet none the less the capture from the Spaniards and the possession of the United States were complete. Such capture, made under the laws of war, constitutes prize.

A Completed Appropriation.

After the capture, under ordinary conditions of prize law, another condition is requisite — delivery of the captured property into the possession of a prize court for adjudication. This condition did not exist in this case, but the statute provides an equivalent condition.

It has already been seen that by §§ 4624 and 4625 of the Revised Statutes, captured property may be taken for the use of the United States. The exact form of language in these sections varies where the fact is referred to. The language of § 4624 is, "taken for the use of the United States"; in § 4625, in one place, "appropriated to the use of the United States," and in another, "taken or appropriated for the use of the United States." This taking or appropriation is by the statute made in all respects the equivalent of the delivery of the *res* to the prize court. The money value of the prize, by R. S. § 4625, heretofore quoted, which should be deposited by the United States, stands in place of the prize. An action similar to a libel against the vessel itself may be instituted, under this section, to fix the rights of the captors.

In the court below, it was conceded that the appropriation by the United States was here completed. It is difficult to see how any other position could have been taken, and it will doubtless be conceded here. The facts are exactly stated on this point in this brief, and detailed references are given to the evidence showing this. The Navy Department took these vessels under its control, appointed its representatives to supervise the operations on them, made a contract for floating them and assumed entire charge of directing their repair and later movements. The United States, now having the possession of the prize property captured by the libellant's command, can not deny the appropriation.

Whether the prize property be delivered to a prize

court and sold, or be appropriated by the United States, the result of the naval operation is the receipt of a thing of value; in the one instance, it is sold at public sale; in the other, it is sold to a paramount purchaser upon a fair valuation. The bodily possession of the vessels upon appropriation by the United States makes the right of prize complete and condemnation in prize must follow.

Illustration of the Right.

The soundness of this position is well illustrated by supposing the existence of somewhat different conditions. Had these been private Spanish vessels, beached in an effort to escape from capture after violation of blockade, floated under orders of the Secretary of the Navy and taken to a prize court, it is at once clear that no question ever could have been raised as to the jurisdiction of the court. There would have been in the court a *res* for adjudication, arriving in court by reason of their Spanish character, their violation of international law, and their capture by the naval forces of the United States. Condemnation proceedings could have been instituted by the United States or, under the provisions of Revised Statutes, § 4625, by this libellant. A further provision of the same section would have granted the right, known also to the British prize law, to the owners of the vessels, claiming their neutrality or innocence otherwise, to move for a monition to show cause or to institute a suit for restitution. The presence of the vessels themselves would have been an all-sufficient answer to any contention that they had not been captured, and the ability to sell the vessels and turn the proceeds over to the disposition of the court would have prevented any question as to the existence of the valuable *res* which is at the basis of the right of prize.

None of the conditions supposed in that case differentiating it from this is of the slightest legal materiality. In

the case supposed, the vessels were of private ownership. A prize tribunal must have been open to settle the title of the vessels and to permit a dispute by the vessel owner as to the right of prize; yet there is no difference in American prize law between a public war vessel of the enemy and a private commercial vessel, in regard to jurisdiction of the prize court. Cases arose in the civil war of condemnation of the enemy's vessels of war, The *Atlanta*, 3 Wall. 425. It is not material to show that captures of enemy's public vessels may have occurred under earlier laws where there were no legal proceedings in the absence of controversy over the rights of capture or distribution. That does not affect the jurisdiction where it is invoked under the statutes quoted.

The absence of the vessel is equally immaterial, since the appropriation by the United States of any prize, public or private, is made by statute equivalent, as we have seen, to the delivery of the vessel itself.

Were the Vessels "Sunk or Otherwise Destroyed"?

The existence of a statute granting a reward where no capture results from a successful naval battle, but, instead, the destruction of the enemy's vessels, is urged as a reason for denying the right of prize in this case. It is conceded that the conditions in this case are such that either bounty or prize money is granted. The government's position is apparently that, since the grant of bounty is "a substitute for the prize itself" (The *Selma*, 21 Fed. Cas. 1046) or "in lieu of it" (Porter *v.* United States, 106 U. S. 611), where there is no prize, prize money is not due when bounty is granted and that bounty is here granted. We readily accept the necessarily correlative position that bounty is not due where prize money is granted and shall show that the bounty statute fails to

include such a case as this. When that is proved, our learned opponent's logic results in the admission of a grant of prize money to the libellant.

§ 4635, already quoted, gives a bounty for each person on board a vessel of the enemy "which is sunk or otherwise destroyed" in an engagement. It can not be contended by the United States that these vessels were destroyed, because the vessels were plainly salvable, their flotation was unimpaired and they were later raised and repaired. Neither were they sunk, except that they rested on the bottom in shallow water, only slightly below their normal water line.

But (even if it should be admitted for the sake of the argument that the vessels were sunk) the description of a vessel "sunk or otherwise destroyed" does not include a vessel sunk, not destroyed, but later saved. The form of expression classes sinking as one form of destruction; "otherwise destroyed" implies that the alternative "sunk" means in some wise destroyed. "Sunk or otherwise destroyed" is equivalent to "destroyed by sinking or otherwise."

Not only the terms of the statute demand this meaning, but its reason requires it. A successful issue of a naval battle is either the capture or destruction of the enemy's vessels; capture is where a vessel comes into the hands of the captors; destruction is where the victory is equally complete, but no vessel accrues to the captors. In this case the vessel came into the hands of the captors and thence to the United States; it was not destroyed.

If a vessel is captured, the reward is measured by its value in the form of prize-money; if destroyed, by an arbitrary statutory rule. The prize-money is the primary reward derived from the property captured; the bounty, under § 4635, is a reward for an equal degree of gallantry where the result was equally fatal to the enemy, but

where no vessel remains for condemnation. The two grants are exclusive of each other; between them they cover the entire results of the successful sea fight.

Bounty Not Granted Without Destruction.

The correctness of our contention appears by supposing that the American fleet had sailed away from Manila after the battle, a course seriously considered, and that the Spaniards, again in possession of these vessels, had floated and restored them, and used them in the Spanish navy again to fight American ships. Could bounty be claimed on them because "sunk or otherwise destroyed," when they were actually doing battle for the enemy? Such a claim could be justly resisted. Or if sunk again in later battles and again raised, could bounty be claimed for a second or even a third "destruction?"

Through the conduct of these captors in action, the United States acquired these vessels. It holds them now as captured property and can not consistently do that and at the same time maintain that the actual captors did not take, but destroyed, them.

The Government lays stress on the fact of there being official reports that refer to these vessels as destroyed along with the other vessels of the Spanish navy that were actually destroyed in the battle. The ingenuity of such arguments is at the sacrifice of sound reason. This court will deal with facts, not words. It will not shift to the Navy the judicial responsibility of giving a definition of this statute. Even if statutory definition were a naval and not a judicial duty, the determination on the part of the Navy that these vessels were not destroyed, as evidenced by its raising them intact and having them now in its service, would outweigh the earlier conclusion of officers who may have reported them as destroyed.

Many judicial precedents can not be expected in a case of

this sort, but one exact precedent is found in the Supreme Court of the District of Columbia in the case of the *United States* v. *The Ram Albemarle.* The facts in this case are facts of history. The *Albemarle* was blown up at her wharf and sunk. She was raised, appropriated by the United States, appraised and condemned in prize. The case was not contested; the decree entered by the court below was not appealed from. Subsequent litigation arose over the same subject and resulted in the report of the proceedings in the original condemnation in the case of *Swan* v. *United States,* 19 C. Cls. 51.

The Court Below.

The learned and lamented judge of the Supreme Court of the District of Columbia, in his opinion (Rec. pp. 157, 158) states the argument very strongly for our contention, and attention is asked to this.

It is submitted that the *Isla de Cuba, Isla de Luzon* and *Don Juan de Austria* were captured by the naval force commanded by Admiral Dewey and appropriated by the United States, and consequently that a decree should be entered for their condemnation in prize and for the distribution of one-half their value to the captors.

The Government's Argument.

The learned attorney for the Government has quoted decisions relating to the abandonment of vessels to insurers by the insured, laying stress upon cases which hold that the right to abandon is to be determined from the facts as they exist on the date of abandonment. The rules governing abandonment are laid down by the courts to define the equities of parties standing on their strict rights, and the effort of judges always is to do equity between the parties, giving always to every countervailing act and right of each its due influence.

Counsel totally ignores, however, the idea permeating all the law on this subject, that the parties themselves may determine their rights *inter sese*, by electing to do so; *e. g.*, an abandonment which would determine the status and title of the vessel may be revoked before it is accepted, and this revocation the jury may even infer *in invitum* from the acts of a party. *Columbian Insurance Co.* v. *Ashby*, 4 Peters, 139–7, 609. So also:

"A loss which was once total may by matter *ex post facto* become a partial one. Thus, if a ship be captured the loss is total and no doubt if she continue within the power of the enemy up to the time of bringing the action, the insured may recover for a total loss. But if she escape, or be recaptured, so as to be still of value, that which was once a total loss becomes a partial loss."

Smith's Mercantile Law, Third Edition, by Holcomb & Gholson, p. 480.

In a note in this same volume, on page 475, numerous cases are cited as to acceptance of abandonment, revocation or waiver. All these cases are based upon the fundamental idea that the changing of the status of the ship and the passing of the title from the insured to the insurer, by abandonment, is matter entirely within the control of the parties. If this analogy affords any light in the case at bar, the libellant and the defendants might have elected to treat the *Don Juan de Austria*, *Isla de Cuba* and *Isla de Luzon* as cases of total loss by sinking and destruction; and by such election they would have been bound. As a matter of fact, both parties have elected, the plaintiff by advising the raising of the ships and by bringing the suit, and the defendant by raising, repairing and taking the ships into possession and making an appraisement of their value as captured vessels, to treat them as such. If this court should hold with counsel, that the United States can, under the circumstances, pay

bounty for these vessels as destroyed ships, and at the same time retain and use them as captured vessels, it would thereby sanction an injustice for which no analogy can be found in the law of marine insurance and which would indeed be an anomaly in American jurisprudence.

The Government's brief argues strenuously that these vessels were "sunk or otherwise destroyed," although now in the navy, and not captured, because they were not actually floated for six months after they came into the captor's possession. The frank logic of the counsel's brief is forced to say that the vessels were sunk or otherwise destroyed on May 1, 1898, "and they remained so for six months thereafter." But how can a vessel be temporarily destroyed? Destruction once effected is permanent; the word involves finality. The Phœnix is known only to fable.

The defect in the argument is that the fact of status is confounded with the ascertainment of the fact. The vessels were actually captured, not destroyed, on May 1, 1898; their presence in the navy to-day proves that conclusively. The ascertainment that they remained effective vessels, not valueless wrecks, was delayed until due examination could be made. Neither this delay nor the early official designation of them as destroyed affected the fact. The Government holds them to-day by reason of their capture; the difficulties and expenses involved in repairing them makes a reduction in the money value of the property captured but does not change the fact.

It is unnecessary to follow the details of the laborious argument by which the opposing theory is built up. That theory is met by the plain fact of the existence of the vessels to-day. From this follows the grant by the statute to the captors of a share in their value on their appropriation by the United States.

Wherever learned counsel quotes the statute he is at

pains to add to it numerous qualifying words to make it fit his theory. This demonstrates the fallacy of his argument. The libellant rests on its plain terms and under these asks a decree.

II.—PROPERTY CAPTURED FROM SUNKEN VESSELS.

The second branch of this claim is for property taken from the sunken vessels in the Spanish fleet.

The Government asserts that guns and other severable articles attached to the vessel form a part of her equipment, and the reward granted by law to the captors is determined by the fate of the vessel itself, even if such articles are saved. Consequently, it is said that if bounty is awarded for the destruction of the vessel, the guns which are recovered must go to the United States without distribution of prize money to the captors.

All rights to the distribution of prize money and bounty rest upon the statute; every claim must be founded upon the statute and every defense must be determined by the test whether the statute either omits or prohibits the grant claimed. The statute itself is the only guide; that relieves this question of embarrassment.

Capture Creates Prize.

The first section of Title LIV, "Prize," R. S. § 4613, declares that the provisions of this title, which includes the section governing distribution of prize money, shall apply to "all captures made as prize by authority of the United States." All the remaining sections of this chapter, in referring to the captured property, recognize that this may be either a vessel or other property. Thus, in § 4615, the documents are to be secured both of the ship and cargo. In certain conditions, a survey shall be had "of

the captured vessel or any part of the captured property." By § 4622, duties are imposed upon the prize commissioners "as soon as any prize property comes within the district." They are to make "their own inventory of the prize property," and they are to report "if the captured vessel or any of its cargo or stores may be useful to the United States." By § 4623, the marshal is to keep safely "all prize property." § 4624 makes provision "whenever any captured vessel, arms, munitions or other material are taken for the use of the United States." By § 4630, "the net proceeds of all property condemned as prize" shall, under certain conditions, be decreed to the captors. Thus, throughout the chapter, a careful reading will show that it is not captured vessels alone which are to be condemned as prize, but it is captured property. Such property may be vessels; it may be of some other kind. Whatever may be so captured is subject to the same disposition, since the language of § 4613 creates a uniform rule for all prize property.

Property was saved from several vessels which were themselves destroyed. Such property was captured by the libellant's fleet and is in the possession of the United States because so captured. The Government, with the property in its possession, can not deny the capture, and this must result in condemnation, since the statute makes capture the test of the right of condemnation in prize.

No Implied Repeal.

The Government meets this plain and straightforward application of the words of the statute by the argument that the grant of bounty by R. S. § 4635 for the destruction of a vessel excludes a grant of prize money for the capture of any portions of the destroyed vessel's outfit which might have been saved. This argument, when reduced to its essentials, is that § 4635 impliedly repeals

the other provisions of the same chapter making prize of such property. Such a contention is easily seen to be unsound. Repeals by implication are not favored. A repeal of one portion of a statute by another portion of the same statute can not be implied; rather are the two parties to be reconciled. *Rodgers* v. *United States*, 185 U. S. 83. Here an easy reconciliation is effected. The bounty for the destruction of the vessel may be received by the captors, while the prize money should be decreed them for the capture of its armament. We rest our claim upon the sound principle of a plain reading of the statute itself.

The reasons impelling this enactment by Congress are all upon the surface of the statute. The primary reward for a successful naval combat is prize money derived from the property captured. This depends upon the existence of a *res* to be sold or appropriated by the Government, the value of which is to be distributed to the captors to such an extent as the law may provide. Where such a *res* exists, the jurisdiction of the prize court attaches and the right of the captors to a distribution follows. Bounty is granted, as we have seen, where the gallantry and success were both as great, but where the vessel itself, the chief subject of prize money, was destroyed.

Therefore, to determine whether any prize money is due, the first question is whether there is captured property; if so, prize money accrues. Here this condition exists.

Bounty is granted (R. S. § 4635) for the destruction of "a ship or vessel of war." This section says nothing about cargo, armament or equipment. This grant does not take away the right to share in prize money derived from the sale of such portions of the vessel's equipment as may be saved.

The possibility of question in the adjudication of this case comes alone from the fact that the United States

took possession of this property. Had this been delivered to a prize court and sold at auction, no shadow would ever have arisen over the right of the captors to one-half the proceeds of the sale. The appropriation by the United States takes the place of the judicial sale, and the value of the property furnishes the measure of the fund from which the captors are to be paid.

The Court Below.

The opinion of the court below was in favor of the condemnation of all property captured from sunken vessels. The language is as follows:

"The next question is whether libellant is entitled to condemnation in prize of the value of property taken from vessels sunk or otherwise destroyed.

"In behalf of the United States it is objected that, inasmuch as libellant has received bounty for the destruction of these vessels under § 4635, he is not entitled, as prize, to property taken from them; that bounty is 'a substitute for the prize itself'—(*The Selma*, 1 Low. 30)—something given 'in lieu of it' (*Porter* v. *United States*, 106 U. S. 607). Bounty is given in lieu of prize only in the case of a ship or vessel of war belonging to an enemy which is sunk or otherwise destroyed, or which it may be necessary to destroy in consequence of injuries received in action. It is proportioned not to the value of the ship, or of its armament or munitions, but to the number of persons on board of her at the commencement of the engagement. While it may be true that the original idea was that the amount so ascertained would be a fair substitute for the prize itself, and such idea may have been not far wrong in the days of wooden vessels of war, yet in these days of steel armored cruisers and battle ships, with all of their expensive appliances, the highest amount of bounty allowed is very inconsiderable compared with the value of the ship sunk or destroyed. It is not an equivalent for prize. There is, therefore, no reason arising out of the amount paid as bounty that would justify the claim that, in fairness, such reward should be exclusive.

"The reward is apparently bestowed for the injury done to the enemy in the loss of fighting power; it matters not how valuable may be the appliances and outfit that go down with her or that are involved in her destruction.

"If the vessel were captured, the cargo or outfit and appliances would enter into the estimate of the total value. I find nothing in the statute to prohibit the condemnation in prize of property captured or taken from ships sunk or destroyed in addition to bounty paid for the destruction of the ship, and I am of opinion that it should be allowed."

The Government's Objections.

The brief of counsel labors to show that there can be no severance of the vessel and its equipment. His learning is admirable, but the argument forgets the principle earlier laid down in his brief, that rights in prize are dependent upon the statutory grant and find both their origin and limitations there. We have pointed out that there is no exception in the grant excluding such property as this and that the whole theory of exclusion is based on the implied repeal of the prize money by the grant of bounty, a proposition which needs but to be stated to exhibit its repugnance to settled rules of statutory construction. The property captured is in existence and in possession of the United States because of its capture. The Government can not refuse to share its value with the captors.

III. PROPERTY CAPTURED ASHORE.

As the result of the battle of Manila Bay there was captured and afterward taken for use of the United States, before it came into the custody of the prize court, a large amount of arms, munitions of war and other naval material, on shore. That property was captured at the

Naval Arsenal at Cavite, an arsenal corresponding to one of our navy yards and the principal base of supplies for the Spanish navy in the Philippine Islands. This was public property; it belonged to the King of Spain. It was arms, munitions and other material for use in naval operations against us, and consisted of ammunition and stores and supplies of all kinds, to be issued to ships to provision, equip and repair them. A large amount of it was taken for the use of our naval vessels and was used upon them. Some of it remains in them to-day. The libellant claims all this property as prize.

Decision of this Court.

The statutes governing this subject have already been quoted in this brief. It is next appropriate to consider fully the authoritative decision of this court upon the question of land prize. This was the case of *Mrs. Alexander's Cotton*, 2 Wall. 404. Mrs. Alexander's cotton, her private property, was captured in the spring of 1864 by a joint expedition of the army and navy operating in Louisiana. A libel was filed for its condemnation as prize and Mrs. Alexander appeared as claimant. The court held the capture justified by legislation, as well as by public policy, though holding that the property could not be condemned as prize for the benefit of the captors. The conclusions of the court are as follows (pp. 421, 422):

"But this reasoning, while it supports the lawfulness of the capture, by no means warrants the conclusion that the property captured was maritime prize. We have carefully considered all the cases cited by the learned counsel for the captors, and are satisfied that neither of them is an authority for that conclusion. In no one of these cases does it appear that *private property* on land was held to be maritime prize; and, on the other hand, we have met with no case in which the capture of such

private property was held unlawful except that of *Thornshaven*. In this case such a capture was held unlawful, not because the property was private, but because it was protected by the terms of a capitulation. *The rule in the British Court of Admiralty seems to have been that the court would take jurisdiction of the capture, whether of public or private property; and condemn the former for the benefit of the captors*, under the prize acts of Parliament, but retain the latter till claimed, or condemn it to the crown, to be disposed of as justice might require. But it is hardly necessary to go into the examination of these English adjudications, as our own legislation supplies all needed guidance in the decision of this case.

"There is certainly no authority to condemn any property as prize *for the benefit of the captors*, except under the law of the country in whose service the capture is made; and the whole authority found in our legislation is contained in the act for the better government of the navy, approved July 17, 1862. By the second section of the act, it is provided that the proceeds of all ships and vessels, and the goods taken on board of them, which shall be adjudged good prize, shall be the sole property of the captors, or, in certain cases, divided equally between the captors and the United States. By the twentieth section, all provisions of previous acts inconsistent with this act are repealed. This act excludes property on land from the category of prize *for the benefit of captors;* and seems to be decisive of the case *so far as the claims of captors* are concerned." [*The italics are our own.*]

This case gives the authority of this court to three propositions:

(1) That any claim to distribution in prize must rest upon a statutory grant.

(2) That for land captures by United States forces in the spring of 1864 there was no such statutory grant.

(3) That under English prize law there was such a grant where the land capture was of public property of the enemy by a force exclusively naval.

Between the *Alexander* case and the present case there

are several important differences of fact: (1) The capture in that case was the result of a joint expedition of the army and the navy; but here it was by a naval force alone. (2) In that case it was of private property; but here of public property of the government of Spain. (3) The property in that case was not arms or munitions of war; but here it was arms, munitions and other material designed for naval use on the Spanish war vessels afloat.

A Change of Statute.

Between the capture of Mrs. Alexander's cotton and the capture of the Cavite naval station the older English rule of what constituted prize was restored in this country. On June 30, 1864, there was a general revision of the prize law; and the English rule was restored to the American prize practice. The changes made by the act of 1864 appear by presenting in parallel columns the provisions of the act of 1862, under which the Alexander case was decided, and the act of 1864.

Act of July 17, 1862.

(§ 2, 12 Stat. L. 606.)

"*And be it further enacted*, That the proceeds of all ships and vessels, and the goods taken on board of them, which shall be adjudged good prize, shall, when of equal or superior force to the vessel or vessels making the capture, be the sole property of the captors; and when of inferior force, shall be divided equally between the United States and the officers and men making the capture."

NOTE.—§ 2, 12 Stat. L. 606, is repealed in the act of 1864 by express reference thereto.

Act of June 30, 1864.

(§ 10, 13 Stat. L. 309; § 4630 R. S.)

"*And be it further enacted*, That the net proceeds of all property condemned as prize shall, when the prize was of superior or equal force to the vessel or vessels making the capture, be decreed to the captors; and when of inferior force, one-half shall be decreed to the United States and the other half to the captors."

(§ 33, p. 315.)

"*And be it further enacted*, That the provisions of this act shall be applied to all captures made as prize by the authority of the United States, or adopted and ratified by the President of the United States."

The act of June 30, 1864, now appears in the Revised Statutes, Title LIV.

Section 10 of the act of 1864 is conveyed verbatim into § 4630 of the Revised Statutes. Section 33 appears in the Revised Statutes as § 4613 in these terms:

"The provisions of this Title shall apply to all captures made as prize by the authority of the United States or adopted and ratified by the President of the United States."

Our position, accepting in full the decision in *Mrs. Alexander's* case, may thus be stated. It is conceded:

(1) There can be no right of captors in prize without a grant of the right by statute.

(2) Prior to 1864, there was no grant of prize to captors in property taken on land.

It is claimed:

(1) By the act of 1864, jurisdiction in prize and a share to captors was granted by statute in all cases whatsoever of "captures made as prize."

(2) This extends the prize law of the United States to all captures which can be classed by proper definition as "captures made as prize."

(3) The definition of "captures made as prize" must be sought in the cases in which the extent of the right of prize is decided.

(4) The history of prize law shows that the right of capture as prize, unless restricted by statute, has always extended to captures of public naval stores of the enemy on land by an exclusively naval force.

And from these premises we conclude that the naval stores captured by Admiral Dewey from the naval station at Cavite are prize, with the incidents given by the general statutes, including the jurisdiction of the prize courts, the regulated right of appropriation by the United States and the right of the captors to share.

These positions may be severally considered.

Effect of the Act of 1864.

What is the effect of these changes?

The provision in the act of 1864, covering all the ground covered by the provision of the act of 1862, would have repealed the latter by necessary implication. *Cook Co. Nat. Bk.* v. *United States*, 107 U. S. 527; *Pana.* v. *Bowles*, *ib.* 529; *United States* v. *Claflin*, 97 U. S. 546. But the Congress was so intent upon showing that § 2 of the act of 1862 was no longer to be in force, that it left nothing to implication. It repealed that section by express terms, substituting for it another widely different in terms. By this repeal and substitution it meant to make a different law, to establish a different rule to govern maritime prize. Wherein lay that difference? Analyzing the two sections, we see that each performs two functions. One function was to define the classes of property to which captors might lay claim as prize, and the other purpose was to declare when the captors should have all and when they should have only half the prize. As to the extent to which captors might claim, the effect of the two provisions is identical. It was to be determined by inferior or superior force. It was needless therefore for Congress to have passed any new provision, or to have repealed the old, unless there was some intent to re-define, by extending or limiting the classes of property subject to claim as prize.

The change made in the law can not be disregarded. The rights of captors, which in the act of 1862 had been limited to the whole of, or a share in, the "*proceeds of all ships*" *and cargoes* "*which shall be adjudged good prize,*" were now extended to the whole of, or a share in, "*the net proceeds of all property*" (and then follow the words) "*condemned as prize,*" which are intended to be the equivalent of the expression used in the repealed statute "which shall be adjudged good prize." The only difference there-

fore in the provision lies in the words entitling the captors in the one case to claim prize only in such *ships and their cargoes* as may be condemned, and in the other to claim prize in the *net proceeds of all property* that may be condemned; and there is no limitation.

If the Government can condemn enemy's property taken on land by a naval force, it is a subject of prize.

Mrs. Alexander's case makes it clear that this expression "*all property condemned as prize*" was intended to define the rights of captors. That case decides that the repealed words in the statute of 1862 constituted the only grant of prize rights for the benefit of captors. Hence it follows that the words substituted for them in the statute of 1864 are to be looked to as granting and defining the prize rights of captors now; and the only question left is, whether public property, consisting of arms, munitions and other material, captured on land by a maritime force as the result of maritime operations, may be condemned to the use of the United States. If so, the captors under the act of 1864 are entitled to share.

In the *Alexander* case the court held the lawfulness of the capture, on considerations of public policy, because of the peculiar character of the property—cotton—which was a great use to the Confederacy, although the cotton belonged to a private person; and while stating that its reasoning by no means warrants the conclusion that the property captured was maritime prize, it nevertheless cited the rule in the British Admiralty Court to have been that the court would take jurisdiction of the capture, whether as public or private property, and condemn the former for the benefit of the captors. Our case comes clearly within the English rule recognized in that case, for here the property captured on land was all public property, arms, munitions and other material of war belonging to the Government of Spain.

This reasoning is strongly reinforced by § 4613 of the Revised Statutes, which was § 33 of the act of 1864:

"The provisions of this Title shall apply to *all captures* made as prize by the authority of the United States, or adopted and ratified by the President of the United States."

To contend successfully that the libellant is not entitled to share in the proceeds of the war material captured by him at Cavite the Attorney-General must show that there is something in the statutes of Congress, which we have not found, or that there is something in our public policy that would prevent our Government through its navy, from capturing and condemning to its own use an enemy's naval supplies on land.

That Admiral Dewey had authority to make this capture there can be no doubt. This "authority" of itself would be sufficient, but it is also certain that the President in the language of this statute "ratified" his act. Our navy was allowed to use this material, much of it, on its vessels, and the Navy was afterwards directed to take, and did take, charge of the Spanish naval station and everything in it. The Navy is but the right hand of the President. Through Admiral Dewey and his fleet the President laid his hand upon the Spanish war material and ratified the capture by using the captured property for naval purposes. It would be strange now if, for the first time, that act of the President should be disavowed by the Attorney-General. No one heretofore has claimed that it was without the authority of the President.

The design of the legislation in 1864 was to extend the uniform rules of prize procedure and distribution beyond ships and their contents, to whatever else under the accepted rule of prize courts was to be considered as prize of war. This act was accompanied by

that of July 2, 1864, 13 Stat. L. 377, declaring that no property captured on inland waters of the United States, by the naval forces, should be regarded as maritime prize. These two acts, considered together, changed the captor's rights in prize as they then existed. Ships and their cargoes were, under the act of 1862, prize to their captors, whether captured on the high seas or in inland waters. Under the two acts of 1864 even ships and their cargoes taken in inland waters were not prize to the captors, but all captures made as prize by vessels elsewhere were distributed in prize, whether the prize captured was afloat or ashore. The test thereafter became, not whether the capture was a ship or cargo, but whether, under the accepted rulings of courts of admiralty, the capture was made as prize under due authority.

Objections to the Libellant's Construction.

Two objections have been made to the construction here advocated: the one in the able opinion of the court below; the other in the exhaustive brief of the attorney for the United States. The court below took the position that the words of §§ 10 and 33 are inadequate, in view of the other provisions of the statute, to accomplish the result claimed. With minute care the opinion analyzes other sections of the act of 1864 and calls attention to numerous references to vessels and their cargoes as the usual subjects of prize. Many provisions in the act, the opinion says, are applicable alone to vessels and cargoes and not to other property.

We can not think the objection well founded in the face of the words of the statute. In an extremely large proportion of cases, prize property consists of vessels and cargoes. Such is the property which in the nature of things is usually captured by an exclusively naval force. It is therefore not strange that Congress, in dealing with

prize, should have made many provisions applicable principally to vessels. The fact that it has done this in no wise restricts the substantive right of prize in other things. § 33 (R. S. § 4630) gives to captors the right to share in all "captures made as prize," whatever the nature of the property. When other things than vessels and cargoes are taken as prize, it is the duty of the courts, in carrying out § 33, to apply the rules of law laid down in the statute, as far as possible, *mutatis mutandis*.

Thus, for instance, in the condemnation of the *78 Bales of Cotton* (21 Fed. Cas. 1100) found floating at sea and apparently thrown overboard, it was quite impossible to comply with the terms of the statute here quoted by the learned judge (Rec. 53) from § 1, to secure the documents of the ship and cargo, including the log-book, and make an inventory of these, or to send "the master," one or more of the other officers, super-cargo, purser, or the agent of the prize as witnesses to the prize court, or to place the prize "under charge of competent prize master and prize crew and send it to court." Numerous other provisions of the act quoted in the opinion can not be applied to such a case as this, yet Judge Lowell had no difficulty in concluding that this cotton was subject to condemnation as prize. It was an exceptional case embraced within the general purport of the law and was not to be ruled out because provisions applying to the ordinary cases of capture of a vessel could not be applied.

In every respect in which the provisions of the prize statute may be applied to the property captured at Cavite, they should be applied. In view of the appropriation of the property by the United States, there is actually no difficulty in making this application. This condemnation may proceed in exactly the same way as if the property appropriated were a vessel and her cargo.

How Shall "Captures Made as Prize" be Defined?

Having thus established that the purpose of the use of the words "captures made as prize" is to extend the statutory incidents of prize, including the rights of captors, beyond the previously existing statutory grant, the next question is to determine how to define these words. The use of the words without definition necessarily presupposes some system of law to which they were familiar. Where then can inquiry be made to reach the definition of the term? There is no other source than the definitions contained in American and English prize cases. Here is a system of law familiar to the legislalative and judicial departments of the United States wherein these terms are used. As in the definitions of other technical terms of law arising in Constitution and statute, derived from the common law, reference is made to their common law meaning for their definition, so in this instance the term derived from the prize law of England must be defined by reference to previous decisions fixing its meaning.

Since the contention now made is that the restrictive terms of the act of 1862 were enlarged by the amendment of 1864 so as to bring again within the prize distribution all "captures made as prize," the English decisions, although unimportant under the self-limited act of 1862, are of immediate relevance in determining the wider scope of the act of 1864. Congress by this act put it beyond doubt that our Navy was entitled to all the privileges of prize which had been enjoyed under the British Crown.

The English law of prize, so far as it is adapted to the altered circumstances and conditions of the country and has not been modified by the proper national authorities,

is the law which governs the prize courts of the United States.

The Siren, 13 Wall. 389; *3 Hgs. Sugar* v. *Boyle*, 9 Cr. 198; *1,253 Bags of Rice*, Blatchf. Pr. Cas. 211, 18 Fed. Cas. 723; *703 Casks of Rice*, 27 Fed. Cas. 1027; *Brown* v. *United States*, 8 Cr. 128.

To determine what are "captures made as prize" we must therefore go to the rules settled in the English courts.

The weight of the argument of the learned attorney for the Government that, under the recognized rules of prize law, property captured on land by an exclusively naval force is not prize, is completely broken by the fact that the act of 1864, in being applied by § 33 to all captures made as prize, requires us to look to the recognized law of prize, particularly as expounded in the English courts, from which our prize authorities are chiefly drawn. If property captured under such conditions as here exist is according to the system of prize law under which our courts operate, to be condemned as prize, then the proceeds are subject, under the broad terms quoted, to distribution to the captors; if not subject to condemnation as prize, they are not subject to distribution.

Land Captures the Subject of Prize.

American Cases Declaring

In *Brown* v. *United States*, 8 Cr. 128, lumber belonging to a subject of Great Britain, in this country before the outbreak of the war of 1812, constituting the cargo of an American vessel, was unloaded in New Bedford and floated up a salt water creek where, at low tide, the ends of the timber rested on the mud, while it was secured from floating out by impediments in the creek. There

was no naval capture, but the District Attorney filed a libel against the lumber in prize as enemy's property, it having been pointed out by a private citizen. It is true the Supreme Court in an opinion delivered by Chief Justice Marshall reversed the decision of the court below; but the reversal did not question that the property of the enemy's sovereign captured on land by a naval force was a subject of prize. In the case reported below as the *Emulous*, 8 Fed. Cases, 697; 1 Gall. 575, Judge Story said:

"However this question may be as to the right of the admiralty to take cognizance of mere captures made on the land exclusively by land forces, as to which I give no opinion, it is very clear that its jurisdiction is not confined to mere captures at sea. The prize jurisdiction does not depend upon locality, but upon the subject-matter. The words of the prize commission contain authority to proceed upon all and all manner of captures, seizures, prizes and reprisals of ships and goods that are and shall be taken. The admiralty, therefore, not only takes cognizance of all captures made at sea, in creeks, havens and rivers, *but also of all captures made on land, where the same have been made by a naval force*, or by co-operation with a naval force. This exercise of jurisdiction is settled by the most solemn adjudication. (*Key* v. *Pearse*, cited in *LeCaux* v. *Eden*, Doug. 606; *Lindo* v. *Rodney*, Doug. 613 n.; *The Capture of the Cape of Good Hope*, 2 Rob. 274; *Stella del Norte*, 5 Rob. 349; *Island of Trinidad*, 5 Rob. 92; *Thorshaven*, 1 Edw. Adm. 102; *Capture of Chinsura*, 1 Acton, 179; *The Rebeckah*, 1 Rob. 227; *The Gertruyda*, 2 Rob. 211; *The Maria Franciose*, 6 Rob. 282.)"

In the case of *680 Pieces of Merchandise* (22 Fed. Cases, 252) the private property of an enemy ferried across a river in North Carolina and recently landed on a wharf, captured by a United States naval force, was held within the prize jurisdiction. This was decided under the prize act of 1862.

In the case of *1253 Bags of Rice*, Blatch. Pr. Cas. 211; 18 Fed. Cas. 723, decided in September, 1862, the United States District Court held:

"that enemy's property captured by a public vessel in an enemy's port, although it was when seized stored in a warehouse on land, near the water, was lawful prize."

The court, commenting on the decision in *Brown* v. *United States*, said:

"The decision upon the merits in *Brown* v. *United States*, went upon the principle that the enemy's property there seized was landed in this country before the war commenced between England and the United States, and that it was not liable to capture as prize in the absence of positive law authorizing its seizure. The majority of the court who adopted that decision did not controvert the decision of the circuit court, declaring the suit to be of a prize character, nor the historical and judicial fact that the practice of the United States courts is governed by the rules of admiralty law disclosed in the English reports. (*Glass* v. *Sloop Betsy*, 3 Dall. 6.) It is very clear that in England the prize jurisdiction does not depend upon locality, but upon the subject-matter. As is said by Sir William Scott, in *The Rebecca* (1 Rob. 227), this was a maritime capture effected by naval persons using a force subject to their use and distinguished from the ordinary land force subject to military persons, and was, therefore, a maritime prize." (1 Kent, 356.)

In the case of *282 Bales of Cotton*, Blatch. Pr. Cas. 304; 24 Fed. Cas. 435, decided December, 1862, the court said:

"The entire property was transported to New York on various vessels as means therefor could be procured. A great part of the cotton and rosin seized had been employed in building fortifications in defense of the town and the residue was owned by citizens of Newbern who aided the Rebellion by every means in their power and who are still in the Confederate army. Cannon were mounted by the enemy upon those defenses and there the

enemy defended the place upon the attack by the United States forces. Armed resistance was made to the taking of the town and many guns were fired on both sides. The capture of the place was made by the flagship *Philadelphia*, and other ships of the navy assisting her. This witness was on board one of the armed vessels and was engaged in the action. He says he is still sure that the entire property seized was the manufacture or production of Newbern. The place was, prior to the capture of this property, in a state of armed insurrection, as was notorious to all, until it was captured, as above stated. Two of the brothers Deeble are now in the Confederate army. The same leading facts are stated by the other two witnesses named in the libel and monition, and judgment by default was rendered against the 282 bales of cotton and 2,000 white oak staves and the quantity of yellow pine planks proceeded against in the suit.

"This property having all been captured during the war, and being at the time employed by the enemy in actual aid of hostilities waged against the United States, and being enemy property, it is decreed to be subject to condemnation and forfeiture to the libellants."

This decree was afterwards reversed on appeal to the circuit court, July 11, 1864, but the reversal was on the ground of want of jurisdiction in the district court, and did not question that enemy's property, captured on land by a naval force, was the subject of prize.

A very carefully considered case is that of the *United States* v. *269½ Bales of Cotton* (28 Fed. Cas. 307). This cotton was captured by a military force penetrating the State of Mississippi by water. The court by Miller, Cir. Jus. held, in an elaborate opinion reviewing previous cases of land capture, that the capture, being made by the army and not by the navy, could not be sustained as prize; accordingly the libel was dismissed. This case is entirely different from the case at bar, and the distinction is pointed out in the following clauses of this opinion (28 Fed. Cases, 307, 310):

"In every one of the cases where the court has sustained its jurisdiction in prize, it appears that the force making the capture, or co-operating in the act, was the naval arm, or, by its presence and active assistance, it contributed immediately in effecting the capture; that it operated from the sea; that the place captured was an island, town, or fortress, itself established to resist naval attack, and to support and succor naval expeditions, and accessible from the sea, so that the attacking squadron could directly bring to bear upon it the stress of its armament." * * *

No words could more accurately describe the case at bar than these. The opinion proceeds:

"However desirable it may be that, in a war between nations, there should exist a tribunal similar to the prize court, to administer the law of nations with reference to property captured on land, we find no warrant for asserting that any such authority exists in the admiralty courts of the United States, unless the circumstances of the capture show some element of a force operating from, or on, the water, which would bring it within the recognized rules on that subject.

These are all the American cases. There has been no decision that public property of the enemy on land is not the subject of prize. The decision of the Supreme Court in *Mrs. Alexander's Cotton* was based entirely on the terms of the act of 1862. The lower courts, we have seen, had held, even when that act was in force, that the question of prize on land was not affected by the statute but must be determined by the rules announced in many previous judicial decisions.

This court in *Mrs. Alexander's Cotton*, Justice Story in *The Emulous* and Justice Miller in *269½ Bales of Cotton* all agree that under general prize law, "captures made as prize" include public property of the enemy captured on land by an exclusively naval force.

It seems strange that in discussing the American cases stress should be laid by opposing counsel upon references by the commissioner who edited the second edition of the Revised Statutes as authoritative in interpreting their provisions. The duty of an editor in referring to adjudged cases is to insert possible references, not to exercise a judicial determination as to whether the case necessarily determines the meaning of the statute. The best editor is the one who gives the greatest number of approximate cases and who the most completely excludes his own opinion.

English Cases.

The opinion in *Mrs. Alexander's* case in the quotation already made, expressly states that public property captured ashore would, under British law, be condemned for the benefit of the captors.

There are numerous cases of land capture reported. The leading case is that of *Lindo* v. *Rodney* (2 Doug. 613). The property in question was captured on the Island of St. Eustatius, and a writ of prohibition was prayed from the King's Bench, to restrain the prize court. Lord Mansfield thus defined the issue:

"The only question then is, whether the goods being taken on land, though in consequence of a surrender to ships at sea, excludes the only prize jurisdiction known in this kingdom."

The decision of the law is so thorough, while the volume itself is so rare, that we transcribe almost the entire case (p. 616 *et. seq.*):

"In short, every reason which created a prize court as to things taken upon the high seas, holds equally when they are those taken at land. The original cause of taking is here at sea. The force which terrified the place

into a surrender was at sea. If they had resisted, the force to subdue would have been from the sea.

"Mr. Piggott candidly said it would be spinning very nicely to contend if the enemy left the ship and got ashore with the money, that this would not have been a sea capture. I agree with him, but I can not distinguish that case from this. Both takings were literally upon land. In both the prey is, as it were, killed at sea and taken upon land. Here the capture of the goods on land is the immediate consequence of a surrender at discretion to a sea force.

"Would the sum paid by capitulation upon land have made it a sea or land prize?

"*Cui bono*, should all this subtlety be spun when the reason for a jurisdiction to judge a capture at sea and such a capture at land is exactly the same?"

The court said further:

"Since the reign of Queen Elizabeth no special commission appears to have issued, but the Judge of the Admiralty, either by virtue of an inherent power, or the King's commission, or both, has solely exercised the jurisdiction of prize.

"I will conclude with three propositions:

"1. That so far back as particular cases can be traced, which is for a century, the Admiralty has judged of, and condemned, goods taken on land as prize, as well as goods taken on sea.

"2. That every common-law authority to be found on the subject allows and supports the jurisdiction.

"3. That the legislature has in many acts of Parliament recognized and referred to it as clear, certain and undoubted.

"4. 15 April, 1692. Sentence of Sir Charles Hodges, Judge of the Admiralty Prize Court, on goods taken on the plunder of a town.

"Captain Mann, commander of their Majesties' hired ships in the West Indies, goes on shore with several of his crew and pillages and plunders the inhabitants of a town, then in the territory and dominions of the French King, and brings off and carries on board his ship a con-

siderable quantity of goods, to the amount of £20,000, as is sworn by several witnesses, besides thirty negroes, worth £20 each. This pillage he keeps to himself, without making any distribution thereof to his followers or crew. The mariners, thinking they had a right to share thereof, have called him to account in a court of prize, and the questions which are made are:

"1. Whether this court has jurisdiction?

"2. Whether the mariners have a right to share?

"3. What that share shall be?

"1. As to the jurisdiction, which is two-fold, the Court of Admiralty and the Court of Prize: [Here there is a long argument to show that it may belong to the Court of Admiralty, as incident to the military authority of the Admiral, in time of war, upon descents as well as at sea, which is not material to be now stated. He then proceeds thus:]

"But go to the second ground of jurisdiction in this case, that it is (as it is) before the Court of Prize, where, by the plain words of the patent under the broad seal of England, it is evident enough that the court has cognizance of prize goods taken from the French, as well by land as by sea. It is, therefore, very clear to me that this court has jurisdiction."

He then proceeds upon the other two questions, as to the shares, but that is not material.

"This was followed, very soon after, by the cause which gave rise to the motion for prohibition in 1698 (*Brown* v. *Franklyn*).

"*1703, Vigo.* Captures under different circumstances. Many to this purport.

"*Adventure*, Trevor, Captain. The Queen against the goods in a certain schedule annexed, taken from the enemy at the port of St. Mary and St. Vigo, in the Kingdom of Spain, and put on board the sailing ship, and there, or in the hands of said Trevor, now or lately remaining, and against all persons in general. Much was undoubtedly taken on land and all condemned.

"*10 July, 1745, Peyta.* Sentence of condemnation to the

King. Several purses of money and jewels amounting to £30,000 and upwards, taken and seized as plunder, in the town of Peyta, being a town in the Spanish West Indies, in the Kingdom of Spain, from the enemies of the Crown of Great Britain, were rightly and duly taken by the officers and mariners of His Majesty's ships (naming them, etc.)

"*4 Feb. 1746.* Plunder taken from the Island of St. Bartholomew and condemned in Antigua, viz., 170 negro and mulatto slaves, and divers other goods, wares and merchandise, seized and taken from the Island of St. Bartholomew.

"*27 April, 1759, Savannah.* Taken by Sir Hyde Parker's fleet, goods and effects (specified) taken in boats and craft *and on shore.* Many claims and restitutions.

"*27 June, 1759.* Plunder taken at Senegal.

"*28 March, 1763, Havana.* Upon another state of facts. The *Tyger* and effects on board surrendered, by capitulation, with the town—treaty *on land.*

"These cases show that for a hundred years, jurisdiction has been professedly, notoriously and quietly exercised, which leads to the second proposition, that this exercise does not rest on acquiescence only, but

"2. That every common law authority to be found on the subject, allows and supports the jurisdiction.

"*Brown and Burton* v. *Franklyn, the King's Proctor, Scacca.* H. 10 W. 3 Carth. 474.

"Brown and Burton, masters of two ships belonging to the East India Company, take a French ship, and cargo, and money, upon land. They had no letters of marque. The King's proctor upon the usual monition got a sentence of condemnation against the whole, as perquisite of Admiralty, and then proceeded upon the ground of this sentence, against Brown and Burton for an account.

"They moved for a prohibition, suggesting that the goods and merchandise were taken *upon land* in the *East Indies*, and that they were no parties to the sentence, never heard, and ought not to be bound.

"The last was an objection upon the eternal principles of natural justice, but immediately removed when the nature of the proceeding *in rem* came to be examined.

"The ground which remained was their being taken upon land. That the court had no jurisdiction, the sentence was null and void, that the subsequent proceeding was illegal, and must have been prohibited.

"But it was insisted by the counsel against the prohibition, that '*prize or no prize*' was a matter not triable at common law, but already appropriated to the jurisdiction of admiralty.

"The court concurred in this proposition, and, therefore, denied the prohibition.

"This is a judgment in point, and the attempts which have been made to show, that no ingenuity can distinguish it, and Lord Chief Baron Comyn draws a general conclusion and maxim of law from it: 'If a sentence be in the admiralty, for a ship or goods, as prize, a prohibition does not go upon a suggestion, that it was not prize, or *that it was acquired upon land.*' (Comyn's Digest, Title Admiralty.)

"But, in 1794, there is a more solemn and more elaborate judgment, by Lord Chief Justice Lee, a very able, and a very strict common lawyer; viz: in *Key and Hubbard* v. *Vincent Pearse*, 31 Jan., 1742. I was counsel in it. It was argued, and could only be argued, as a mere question of law, just as if it had arisen in Westminster Hall upon a capture in the river Thames, within the body of a county.

"The colonies take all the common and statute law of England, applicable to their situation and condition. The courts of law prohibited the court of admiralty, just as the courts of Westminster Hall do here.

"I had a full note of it. But luckily Lord Chief Justice Lee, having taken time to consider, he brought with him notes of the opinion he was to deliver, which notes we have in his own hand.

"(Here his Lordship read the opinion of Lee, Chief Justice, verbatim as it is set forth *supra*, pp. 606–608.)

"Nothing can be clearer than the principle laid down by him. The question '*prize or no prize*,' is the only boundary line; and not the locality of land or sea, or port within the body of a county within the realm.

"3. That the legislature in several acts of parliament,

has recognized and referred to this jurisdiction over goods taken on land as prize. The prize act of 17th and 29th Geo. II contains a clause that the Lords of Admiralty shall grant a commission, at the request of the owner, to the captain of any ship, 'For attacking or taking, with such ship, or with the crew thereof, or any place or fortress *upon land;* or any ship or goods belonging to or possessed by, etc.'

"The statutes of 19th George III, meaning to express the same thing, has used more words to effectuate the grant of the property to privateers, but takes the jurisdiction for clear and certain.

"Subsequent acts follow this.

"Upon these authorities there can be no doubt. We, none of us, ever had any.

"If the question had been doubtful, arguments from utility and public convenience ought to have turned the scale. It could answer no good end, and must produce inextricable mischief, to captors, claimants and the state, if goods taken upon land by ships, should not be within the prize jurisdiction."

In *Mitchell* v. *Rodney* (2 Brown P. C. 423), the same capture was considered on an appeal from a judgment based on a special verdict in an action for damages brought against the commanding officer of a fleet. It was held that the plaintiffs were not entitled to recover on the ground that the prize court had jurisdiction over the capture made by a naval force, although on land. The reporter, in giving the reasons urged in behalf of Rodney and on which the House of Lords decided for him, says (p. 429):

"On the other side, the only question made in the cause was whether the goods being taken on land, though in consequence of a surrender to ships at sea, gave the common law courts in this country a jurisdiction in the cause. It is established on the authority of a regular series of decisions that the question of 'prize or no prize' can not be tried at common law, but must be tried before a judge of the high court of admiralty;

and that the jurisdiction depends not upon the locality or upon the parties, but upon the nature of the question; which is such as not to be tried by any of the rules of common law but by a more general law, the law of nations, administered by forces best adapted to the subject of its jurisdiction, and the interests of all parties. That if the capture had been rightfully made, the captor can not apply to the common law to give him security in his possession or to enable him to dispose of it; the common law knows no process to make people say whether they have or have not a right; he must hold himself at his peril without the power of using it, answerable for decay or damage, and liable to separate law suits from every individual who can set up a claim. That if it had been wrongfully made the common law could restore nothing upon the affidavit of the party; each individual must bear the whole burden of his lawsuit, though the same question might have been tried and determined in favor of every individual; and neither party can have the benefit at common law of that sort of evidence which the subject-matter of the litigation in many cases absolutely requires, and which a court of admiralty is properly constituted to receive. That all the cases upon the subject exclude the jurisdiction of the common law and many of them directly declare that jurisdiction to be in the judge of the high court of admiralty; and in the latter judgments it has been held that even if there were no such previous authorities and the jurisdiction now was not to be directed by the uniform decisions of former cases, but was to be made for the first time, there can be no case in which that maxim '*Quod inconveniens est non est licitum*' so often repeated by Lord Coke, would deserve more attention. That the judge of the court of admiralty sits under an authority which does not limit his jurisdiction to the sea, but is general to all manner of captures, seizures, prizes and reprisals, and is the only prize jurisdiction known in this country. The statutes of 13 and 15 Richard II and 2nd Henry IV have no reference whatever to this case; and captures made equally within the limits mentioned in those acts as if they had been made on land (as in

ports, havens, etc., within the realm) have constantly been tried within the prize court of admiralty. That so far back as particular cases could be traced which was for a century, the admiralty has judged of and condemned goods taken on land as prize, as well as goods taken on sea; every common law authority on the subject allows and supports the jurisdiction. And that the legislature has in many acts of Parliament recognized and referred to it as clear, settled and undoubted."

In *Lord Camden* v. *Home*, 4 T. R. 386, the court says:

"Whatever is taken by any of the King's subjects from the enemy in the course of naval operations is prize and appertains to the King, either *jure coronæ* or as a droit of admiralty, according to the circumstances. If taken by a private ship without any commission from the King, the prize belongs to him as a droit of admiralty. If the ship had a commission, only one-tenth of the prize belongs to the King as droit of admiralty, and the rest is the property of the owner of the privateer."

It is held *In re French Guiana* (2 Dods. 151) that money received from the Portuguese Government as a result of a joint expedition of the British and Portuguese, resulting in the capture of Cayenne, the money being the value of public property there taken on land, should be condemned as prize.

The converse of the present case is *The Rebeckah* (1 C. Rob. 227.) A statement of this case is given in *United States* v. *269½ Bales of Cotton* (28 Fed. Cas. 306) as follows:

"The case of *The Rebeckah*, 1 C. Rob. Adm. 227, decided in 1799, was a contest between the admiralty and the captors. The circumstances were, that the vessel on putting into St. Marcou, for safety, was fired at from the fort, and struck her colors, and was taken by a boat's crew sent out from the fort. St. Marcou was a small island, occupied exclusively as a naval station for naval supplies, and for the temporary accommodation of ships

of war. The question was between the admiralty claiming the vessel as droit of admiralty and the captors. Sir William Scott, in his judgment, holds it a maritime capture, because, although made from the shore, 'the whole force, such as it is, upon this little spot, is entirely subservient to these vessels, and for their use, and for no other purpose, as the certificates declare. Such a place, so selected and so employed, is hardly to be considered as anything else than as a part or appendage of the naval force; it is a sort of stationary tender, rather attached to and dependent upon these vessels, than having the vessels attached to and dependent upon it. This peculiar character of the place distinguishes it most essentially from the case of a land fortress possessed by a land garrison. The capture then was affected by naval commissioned persons, using a force immediately subject to their use; and from its peculiar circumstances sufficiently naval in itself to be distinguished from an ordinary land force, subject to military persons. It is a maritime capture, effected regularly by a maritime force, and in a spot where the right of the admiralty had not yet commenced upon the thing itself at the time of the surrender.' And he clearly indicates that, had the force by which the capture was effected been under the command of the military instead of naval officers, it would have been a droit of admiralty. He says: 'Upon this subject I entirely accede to what has been laid down, that a capture at sea, made by a force upon the land (which is a case certainly possible, though not frequent,) is considered generally as a non-commissioned capture, and inures to the benefit of the lord high admiral. Thus, if a ship of the enemy was compelled to strike by a firing from the castle of Dover, or other garrisoned fortress upon the land, that ship would be a droit of admiralty, and the garrison must be content to take a reward from the bounty of the admiralty, and not a prize-interest under the king's proclamation.' And again, he holds that, even when naval forces land and use arms of the military, and fortifications by which to effect the capture, the result is the same.

"This, then, is the case of a capture by naval forces of property on the same footing as if it were afloat."

The same learned judge further considers the other English cases on the same subject and thus states them (28 Fed. Cas. 306):

"*The Island of Trinidad*, 5 C. Rob. Adm. 95, decided in 1804, was a claim on behalf of several ships to share in the capture, among other things, of the island and its dependencies. Without entering into any consideration of the principle here involved, and occupying himself with a question whether the vessels were present at the close of the conflict, the same learned judge pronounced some of them entitled to share in the capture of the island. This, then, is the case of a capture by naval forces operating from the sea, of property on land.

"The capture of the *Chinsurah*, Acton 179, decided in the high court of appeals in 1809, by Sir William Grant, was the case of the capture of the Dutch town and fort by a vessel of the squadron, and a detachment of the East India Company's troops. Previous to the capture, the Dutch East India Company had entered into many contracts with neighboring merchants for supplies of certain articles of merchandise. The governor of the place, among others, had entered into such contract with one Halsey, and had on account thereof advanced to him £23,200. At the time of the surrender this contract remained unperformed, and the question was presented, whether it should be condemned for the English company or for the naval forces, each seemingly claiming the whole fund. The court condemned the whole property generally as prize to the crown, to be distributed. From this sentence both parties appealed. The sentence was affirmed. The reasons for the judgment on the point before us here are not assigned. But it is plain that the case was one of conjunct capture, which was effected by operations from the sea, and by the aid of naval forces, and, as it would seem, all under the vice-admiral's command.

"Nor does the case of *The Thorshaven*, Edw. Adm. 102, throw much light on the question. It is enough to say here that, whichever command should be deemed the captors, the capture was by naval forces operating in naval warfare.

"In *The Buenos Ayres*, 1 Dod. 28, the single clause with which Sir William Scott commences his judgment shows the circumstances of the case, and how summarily the question of jurisdiction is disposed of by him. He says: 'This is a proceeding originating in the capture of the Spanish settlement Buenos Ayres. A claim is set up by Captain Honeymoon and the other officers and crew of his Majesty's ship the *Leda*, to share as joint captors in the proceeds of the property captured at that settlement.'"

It is to be observed that these cases are not decided upon the special terms of statutes or royal grants, but upon general principles of prize law.

Justice Story, in an elaborate note added by him to 2 Wh. as an appendix, entitled, "Additional Note on the Principles and Practice in Prize Causes," says:

"As preliminary to the subject it may be observed, that the ordinary prize jurisdiction of the admiralty extends to all captures made on the sea, *jure belli* (*The Two Friends*, 1 Rob. 271, 284); to captures in foreign ports and harbors (*Lindo* v. *Rodney*, Doug. 613, note); to captures made on land by naval forces and upon surrenders to naval forces either solely or by joint operations with land forces (*Lindo* v. *Rodney*, Doug. 613, note; *Chinsurah*, 1 Acton 179); and this, whether the property so captured be goods, ships or mere choses in action (*ib*)."

These cases establish with great clearness the conclusion that, under the English law, public property of the enemy captured on land by naval forces was subject to condemnation as prize, a conclusion reached by this court in the case now chiefly relied on in opposition to this libel.

Nothing is more dangerous than to accept general definitions as controlling particular cases not in contemplation at the time. Thus learned counsel takes a special foot-note to show that Lord Stowell's definition of prize as "goods taken on the high seas" is inaccurate in not

including property taken in inclosed waters. The true source of accurate definition is in cases involving the point of controversy. We have shown that when the right to land captures has been litigated in court, these have been held to be prize if captured by a naval force alone. The definition, accurate in general, must then be subject to this extension also.

So too booty is stated in general definitions to be land captures, but the cases show that booty is land captures effected by the army with or without naval aid. Adjudicated cases thus give an authoritative exception to the otherwise correct definition.

The Ancient Rule Restored.

Although the right of prize in land captures of public property by vessels of the United States was taken away by the restrictive terms of the act of 1862, this ancient and well-recognized right was restored to them by the extension of prize distribution in the act of 1864 to "all captures made as prize." Thus were rights always existing under British law and supposed by many American judges to belong to the American Navy, granted by Congress to remain in force until all distribution of prize money was abolished by the act of March 3, 1899, § 13, 30 Stat. L. 1007.

The scope of the word "prize" is so long settled and well recognized, that it can only be considered as having been used in a technical sense when employed in the framing of this statute.

Bishop on Written Laws, p. 127, says:

"Whatever is newly created by statute draws to itself the same qualities and incidents as if it had existed at common law. In other words, the statute is to be interpreted after the rules and incidents of the common law. (*The William Gray*, 1 Paine, 16)" and again, on page 22,

—"When an act of Parliament creates a new interest, it shall be governed by the same law that like interests have been governed by before." (*Lane* v. *Cotton*, 12 Mod. 472.)

The qualities and incidents attaching to the word "prize" under the uniform decisions of the prize courts, continue attached to the word when, by statute in 1864, a new and enlarged interest was given to the captors in property taken as prize. There must be considered as annexed to these new interests the same qualities, incidents and controlling law as went with the word before the statute was enacted. In the present case, where the statute refers to the interest of the captors, it annexes to those newly-created interests all the rules of construction governing the subject-matter, that an unbroken line of decisions has established. If this be not so, then the act would limit the interests of the United States equally with those of the captors to water-borne property, and under such a construction of the statute, no provision whatever could be considered as having been made in the act for the judicial disposition of such property as might have been captured on shore.

It is not presumable that such a result was intended by this legislation. By repealing the act of 1862, which restricted the subjects of prize in which captors could share to "ships and vessels and the goods taken on board of them," and enacting that they should share in "the net proceeds of all property condemned as prize," it is clear that Congress meant to give captors a right to share in the net proceeds of all property that the Government could condemn as prize, which, under the decisions we have quoted, would undoubtedly include this public property captured ashore by a naval force operating from the sea against a place accessible from the sea.

The Land Capture the Notable Achievement.

The fact which gives the chief permanent glory as a military achievement to the victory of Manila Bay is not the defeat by the American vessels of the Spanish vessels, but the capture of the shore defences. It is but the second time in naval history when shore batteries were attacked and captured by a naval fleet without the assistance of an army. This fact is stated by Admiral P. H. Colomb, R. N., in his authoritative work, "Naval Warfare":

"The fall of Chagres (March 24, 1740) after an attack by bombardment alone, comes upon us now, we may observe, as in some sort a novelty in naval war. We have had captures of forts by the attack of land forces without any direct assistance from the ships; we have had them when the attack by ships had been made subsidiary to that by land forces; and we have seen the captures made as at Gibraltar and Porto Bello, where the main attack has been by the ships and the land attack has completed it. We have also had bombardments where no surrender has followed. This fall of Chagres appears to be the first instance of capture following simple bombardment, but the course of history shows us that the result was exceptional, and depended on the geographical situation of the place and the moral fibre of the garrison defending it."

The allowance of prize money on account of property captured ashore is an allowance to Admiral Dewey and his fleet for the very attack which will, in future history, mark the unusual character of the victory.

The Effect of the Treaty.

This property at the Cavite Naval Station was captured May 1, 1898. On December 10, 1898, the treaty of peace was signed at Paris, and the treaty proclaimed on April 11, 1899. During the whole of that time, it is clearly

shown by the evidence, the property in the Cavite Naval Station was used by the United States naval forces, and in large part had been, at the last date, actually consumed in repairs to United States naval vessels. By article five of the treaty (30 Stat. L. 1757), the following provision was made:

"The time within which the evacuation of the Philippine Islands and Guam shall be completed shall be fixed by the two Governments. Stands of colors, uncaptured war vessels, small arms, guns of all calibres, with their carriages and accessories, powder, ammunition, live stock, and materials and supplies of all kinds, belonging to the land and naval forces of Spain in the Philippines and Guam, remain the property of Spain."

The Government apparently concedes that the property consumed for military purposes prior to April 11, 1899, is not affected by this provision, but maintains that the rest of the property is not the subject of prize in any event. It appears, however, by a manuscript return from the Navy Department filed in the court below but not brought up in the record on appeal, that the small portion of the property then remaining in the Naval Station was transferred to Spain in January, 1901, under the provisions of this article, long after this libel was filed. If any part is exempt from condemnation, it must be limited to this property actually restored.

The Government bases its claim to the exemption of this property on the ground that it is analogous to the release of captured vessels prior to decree of condemnation. Authorities will doubtless be produced showing that a nation whose vessels capture prizes must, for public reasons, reserve the right to release the prizes in derogation of the rights of the captors. The question has been disputed, Sir William Scott saying, in *The Mercurius* (1 C. Rob. 80):

"It has been declared by high authority that the interest of prize is vested in the captor, and that captors may against the wish of the crown proceed to adjudication."

Later, in the case of *The Elsebe* (5 C. Rob. 173), decided in 1804, he states correctly the grounds of his conclusion that it was within the power of the crown to release prior to adjudication.

We would not contend to the contrary or that the same power is not vested in the President of the United States.

The same distinguished judge, however, in *The St. Ivan* (Edw. 376), decided in 1811, thus declared the limitation which should be imposed upon that power:

"It is true that it has been held in this court, as well as in the courts of common law (for there have been decisions directly upon this point), that the King may, for reasons of state, release a prize against the interest of the captors. The captors bring in their prizes subject to such interposition on the part of the crown, but it is of very rare occurrence, and speaking with all due reverence, ought to be of rare occurrence, and only under very special circumstances; as, for instance, where the detention of the vessel may be detrimental to the general interests of the country. In such cases there can be no serious doubt of the authority or of the intentions of the crown."

The reason why release should be a very rare occurrence is self evident. The rights granted by law to the captors as a reward for their enterprise and gallantry ought not to be taken away from them by a retroactive order of the executive. Rights vested to this extent should be treated as final.

Here the facts show no such release in derogation of the captors' rights as was approved in *The St. Ivan*.

The naval stores now actually in the vessels of the United States or otherwise used in service were not released and

must be condemned as appropriated. The real question is as to the property claimed as prize but shown by the list filed in this court to have been actually returned to Spain. We contend that the return came too late. This property was all taken into the possession of the United States naval authorities and treated by them as the property of the United States long before this return. When so taken and treated by the United States the rights of the captors vested. The same statute that provided for the United States to take and appropriate to its use the arms, munitions of war and other materials also provided that upon those things being taken and appropriated it was to pay over to the captors their share of the value.

The title to the property having passed out of the Spanish Government into the United States in trust for the captors has, by the appropriation of the United States, passed to the United States itself. If, after that, the United States grant by treaty or act of Congress any portion of this property to Spain, this is a gift by the United States of its own, not of the captors' property. The captors' right vest upon the appropriation by the United States.

The statute indeed directs the appraisal of such property and requires the deposit of its value subject to the order of the court. These things were not done in this case; the property was not appraised and the money has never been deposited, because of a question whether it was prize. But if the United States had, prior to April, 1899, obeyed the law and deposited the value of these goods to the order of a court of the United States, we submit to the court whether, after that date, the United States could give the property to Spain, or to any other power, or to any private individual, in derogation of the captors' rights.

Opinion by Court Below Upon Property Captured Ashore.

Our contention is that § 4630 of the Revised Statutes, which is § 10 of the Act of June 30, 1864, 13 Stat. L. 306, providing that the captors shall share in the net proceeds of all property condemned as prize, gives to the captors the right to share in the net proceeds from this property, if the same is by law subject to condemnation as prize to the United States.

The opinion of the court below (Rec. 151), admits that in two cases it was decided by eminent jurists that property captured on land by a naval force operating from the sea is lawful prize. One of these was a decision by Justice Story, in the United States Circuit Court, and the other was by Justice Betts, in the District Court. But it is claimed that these cases are discredited, because afterwards overruled. First calling attention to a case that squarely maintains our proposition, and which has never been overruled, viz: *103 Casks of Rice*, Blatchford's Prize Cases, 212, 213, we remark as to the other two cases which were reversed: In that decided by Justice Betts, viz: *282 Bales of Cotton*, Blatchford's Prize Cases, 304, there is no published report of the decision of the court above, but there is a note that the case was overruled in the Circuit Court for want of jurisdiction; and in the volume of Federal Cases where this case is reported there is a note that no copy of the opinion of the Circuit Court can be found.

In the other case, viz: that of the *Emulous*, where the opinion was rendered by Justice Story, he was reversed in an opinion rendered by Chief Justice Marshall, the case being reported as *Brown* v. *United States*, 8 Cranch. 110. But Chief Justice Marshall does not question the principle laid down by Justice Story, that the admiralty takes jurisdiction of captures made on land by a naval

force. He puts his reversal on the ground that the property (which was not captured by a naval force) was in our country before the commencement of hostilities, holding that "the power of confiscating enemy property is in the legislature, and that the legislature has not yet declared its will to confiscate property which was *within our territory on the declaration of war.*" (*The italics are ours.*)

He concedes that war gives to the sovereign full right to take the property of the enemy wherever found, and points out that while the mitigation of this rigid rule, which the humane and wise policy of modern times has introduced into practice, may more or less affect the exercise of the right, it can not impair the right itself. Nowhere did he question the proposition that enemy's property captured upon enemy's land by a naval force after hostilities had commenced, was a proper subject of prize.

In the present case, every reason that would have justified a capture had the property been afloat, applies to this capture made ashore. The property was public property belonging to our enemy on his territory and was intended *for use in naval operations against us.* The capture of the supplies at the enemy's only navy yard in the East was as effective a blow at his naval establishment as the sinking of ships, and the immediate use of many of those supplies by our fleet was as beneficial to our navy as if those supplies had been captured afloat.

As to captures by naval forces, whether afloat or ashore, there has not been the same mitigation of the ancient rule, and in the growth and development of international law not the same demand for such mitigation, because where property is captured by a naval force, subject to condemnation before a court, claimants have a right to be heard and are not exposed to the same hardships as in the case of captures by land forces, termed booty,

where title passes immediately upon capture without any condemnation. It should be the policy of every government that recognizes the right of naval captures at all, whether afloat or ashore, to hold strictly to the rule that property so captured shall be condemned by a competent tribunal, this as a guaranty against abuse of the right of capture. Wharton on Captures says, p. 278:

"The jurisdiction of prize courts extends as well to goods taken on land by a naval force, or in subsequent operations by a naval force, as to property captured on the waters."

The opinion of the court below (Rec. 151) next refers to the case of *269½ Bales of Cotton* (1 Wool. 236) as sustaining the negative of our proposition, and also to a quotation from Justice Gray, in *Paquete Habana*, 175 U. S., p. 711, as, while probably *obiter* in that case, a very weighty outgiving in favor of the negative of the proposition.

As to the case of *269½ Bales of Cotton*, the capture *was not by a naval force at all, but was made by the army*, and the property could not possibly have been a subject of prize.

As to the quotation from Mr. Justice Gray the Supreme Court at the same term at which this decision was rendered, and speaking through the same lamented Justice, in the case of *Oakes v. United States*, 174 U. S. 786, said:

"By the law of nations, as recognized and administered in this country, when movable property is in the hands of the enemy, used or intended to be used for hostile purposes, the title passes to the captors as soon as they have reduced the property to formal possession; but when such property is captured by naval forces, a judicial decree of condemnation is usually necessary to complete the title of the captors."

The court below holds that the first nine sections of the prize act of June 30, 1864, show that only ships and their cargoes are a proper subject of prize, and further on, relative to capture of cascos, even holds that capture of ships is restricted to those that carry ship's papers.

In considering these nine sections as defining the subject of prize, it must be borne in mind that all these several sections bear upon the bringing of property into a prize court. It is only natural that the word "prize" should refer almost invariably to a ship and what may be brought in it. It is to be noted that where the act refers to property subject to condemnation, but not to be sent into court, the language broadens.

§ 27 of the act, which has reference solely to property that can not be brought in, but which is nevertheless a subject of prize, states that wherever—

"any captured vessel, arms, munitions or other material, shall be taken for the use of the Government—[without anylimitation as to where taken]—before it comes into the custody of a prize court, it shall be surveyed, appraised and inventoried * * * and the survey, appraisement and inventory shall be sent to the court in which proceedings are had."

Then follows the next section, 28, prescribing the proceeding before the prize court in cases of this kind.

This § 28 authorizes proceedings to treat as subject of prize any vessels, arms, munitions, or other material that may be taken for the use of the Government (without any restriction whatever as to the place where the same may have been taken). The right to institute these proceedings is granted, first, to the Secretary of the Navy, and if he fails to proceed within a given time, then the captors may move.

The Constiution, Article VIII, § 11 provides that—

"Congress shall have the power * * * to make rules concerning captures on land and water;"

and § 27 of the act under consideration providing for the condemnation of "any captured vessel, arms, munitions or *other material*" "taken for the use of the Government," without limitation as to the place of capture, makes a rule for captures both on land and sea. Beside this rule Congress provided that district courts should have jurisdiction (R. S. § 563):

8. "Of all civil causes of admiralty and military juristion * * * and of seizures on land and water not within admiralty and military jurisdiction. And such jurisdiction shall be exclusive, except in the particular cases where jurisdiction of such causes and seizures is given to the circuit courts."

9. "Of all proceedings for the condemnation of property taken as prize in pursuance of section fifty-three hundred and (seventy-six) eight. Title, Insurrection."

§ 5308, above referred to, designated certain property, if intended for certain uses, as a lawful subject of prize, wherever found, and the proceedings had under that statute during the civil war and intended to be had were mostly, if not entirely, where the property had been captured ashore.

The law of 1864 is extant to-day, so far as defining what this Government shall treat as prize. The provision in the naval appropriation act of March 3, 1899, § 13 (30 Stat. L. 1007), taking from captors the right to share in prizes, and which is as follows:

"And all provisions of law authorizing the distribution among captors of the whole or any portion of the proceeds of vessels, or any property hereafter captured, condemned as prize, or providing for the payment of bounty

for the sinking or destruction of vessels of the enemy hereafter occurring in time of war, are hereby repealed."

does not relieve the United States of its responsibility as a civilized nation to condemn property which Congress has made the subject of prize. The only change made by this provision is that the *captors could not share*.

So long as Congress provides that where the Government appropriates to its own use in time of war captured arms, munitions and material, *before they are brought into a prize court*, it may have three months in which to select a district to institute prize proceedings, or, upon failing to act, claimants—though excluding captors—may move monition to show cause why proceedings shall not be commenced, or institute original proceedings, just so long is the value of arms, munitions and material which have been captured and appropriated to to the use of the Government a subject of prize. Congress has so determined, and the Government does not take the property "*jure reipublicæ*, as contradistinguished" from the right to have the capture adjudicated in a prize court.

We respectfully submit that the words *jure reipublicæ*, as used in the decisions, are misapprehended by counsel. We have never had in this country rights of admiralty, and captures, therefore, always have been and still are made by right of the Republic, but that does not mean that the property captured is not prize where Congress has subjected it to adjudication in a prize court. As the law stands to-day, claimants have rights, and either the United States or they can institute proceedings.

There can certainly be no reason why arms and munitions of war intended for naval use against us should not, when captured by our navy in naval operations, be taken and appropriated to the use of this Government, whether taken on land or on a vessel; but there is every reason

why property so appropriated should be adjudicated by a prize court, and Congress very properly so decided by §§ 27 and 28.

§ 29 of the act of June 30, 1864, in reference to salvage, does not indicate an intention to confine the subject of prize to vessels and things taken upon them. The language used is:

"That when any vessel or other property shall have been captured by any force hostile to the United States and shall be recaptured, and it shall appear to the court that the same had not been condemned as prize before its recapture," etc.

The opinion of the learned judge below (Rec. 155 contends that the words "all property condemned as prize," in § 10, necessarily refers to the property described as prize in the preceding sections; that the section is only a provision for distribution of net proceeds after condemnation, and that its wording "gives added certainty to the claim that prize means 'ship,' or 'vessel,' or 'cargo.'"

The net proceeds for distribution arise either from the sale of the prize property brought into court, or from the value of captured property, not necessarily a "ship," or "vessel," or "cargo," and *appropriated by the Government to its own use*, which value the Government is directed to deposit with the Assistant Treasurer of the United States. Unless this appraised value be net proceeds, there would be no object in authorizing the Government to come into court to condemn it, or failing to come, authorizing the claimants. We do not suppose that it would be contended that if arms or munitions of war had been taken from a vessel and the value paid into the Treasury, that value would not be net proceeds in which the captors could share. Likewise the value of any property which Congress provided for condemnation of, upon the property

being appropriated by the Government, is net proceeds in which captors can share.

We do not contend that there was anything in § 10 that was intended to extend the commonly accepted meaning of prize, but we do contend that that section was meant to give captors the right to share in the net proceeds of all property the Government could condemn as prize, whether such net proceeds arose from the sale of property brought into court or from the appraised value of property appropriated before being brought in.

The opinion states (Rec. 155, 156) that the construction adopted is strengthened by contemporaneous legislation and cites as evidence of this the following proviso from the captured and abandoned property act of March 12, 1863 (12 Stat. 820):

"That such property shall not include any kind or description which has been used, or was intended to be used, for waging or carrying on war against the United States, such as arms, ordnance, ships, steam boats, or other water craft, and the furniture, military supplies, or munitions of war."

The closing section of the captured and abandoned property act seems to have been overlooked when the above proviso was cited, which is § 7, "That none of the provisions of this act shall apply to any lawful maritime prize by the naval forces of the United States." Notwithstanding this, however, the proviso does not sustain the view in support of which it is cited, for there was a special reason for its enactment, in that the property excepted by it from the captured and abandoned property act was under another law already prize—the act March 6, 1861, 12 Stat. L. p. 319. True it was not prize in which a naval force if it captured the property ashore could share, because Congress had not given the navy that right. It was prize property as to the United

States, Congress having by the act of 1861 provided that property taken when used or intended to be used in waging war against the United States should be lawful prize and condemned before a prize court. It did not give the Government title without such proceedings, as it did where property which was not used or intended for use in making war against the United States was taken under the captured and abandoned property act. It is thus strange that this contemporaneous legislation could be thought to indicate an intention on the part of Congress to exclude property taken on land from being subject to condemnation as prize.

Congress throughout the civil war recognized the wisdom of having arms, munitions and war materials intended for use against the United States condemned as prize, wherever taken and by whomsoever taken, as shown by the act of August 6, 1861, Stat. L. p. 319. There was no legislation until 1863 authorizing the appropriation of property of this character to the use of the Government before condemnation, but at that time Congress empowered either the Secretary of the Navy or the Secretary of War to appropriate before condemnation any captured vessels, arms or munitions of war, or other material for the use of the Government, but provided that the value of the property so appropriated should be deposited in the Treasury of the United States, and also for the prize proceedings to follow. See § 2 of the act further to regulate proceedings in prize cases and to amend various acts of Congress in relation thereto, approved March 3, 1863, 12 Stat. L. 759.

This act clearly recognized that the property taken under it should be treated as prize, just as the act of 1861 did, though neither of those acts had granted any rights to captors. In 1864 Congress passed a law entitled "An act to regulate prize proceedings," and § 35 expressly

repealed the act of March 3, 1863, and enacted as a substitute for § 2 of that act above referred to, that whenever any captured vessel, arms, munitions or other material were taken for the use of the Government before coming into the custody of the prize court, that the value of the same should be deposited as provided for under the act of 1863, and prize proceedings follow; but it also provided by § 10 of the act of June 30, 1864, that captors might share in the net proceeds of all property condemned as prize, and gave in § 28 a right to captors to institute condemnation proceedings wherever arms, munitions and material had been appropriated to the use of the Government.

Thus were the rights of captors to share expressly extended to property, or the value of the same, which all throughout the war the Government, as far as its own rights were concerned, had treated and condemned as prize. There is no more in the act of June 30, 1864, to show that Congress intended to limit the rights of captors to property taken afloat than there is to show that it intended to limit the right of the Government only to such arms, munitions and material as were captured afloat. The argument that it does goes on the idea that the Government takes the property when ashore *jure reipublicæ*, and yet does not take it *jure reipublicæ* afloat. There is no such distinction. The Government has always taken all captured property *jure reipublicæ*, whether afloat or ashore. Congress recognized the desirability of having all captured property, intended for use against the Government, condemned in a prize court. When it authorized the appropriation of such property before condemnation, even before it gave captors any rights to share, it provided for adjudication of the property. When in 1864 it granted to captors the right to share in all property condemned as prize it continued to provide for adjudi-

cation after the property was appropriated. If this property taken ashore would be subject of prize on the election of the United States to commence prize proceedings, it must also be subject on claimants' election. Otherwise the Government by merely doing nothing could prevent the adjudication of the rights of captors or claimants, for they can do nothing until the Government has had its three months in which to select a district for the institution of proceedings. That the Government itself could not, under this act, institute prize proceedings to condemn this property when captured ashore is the only hypothesis on which the property could not be considered as subject of prize. Sections 27 and 28 require that when taken it should be condemned, and those sections, considered in connection with § 10, give to captors a right to share in the proceeds, whether they or the Government commence proceedings.

§ 7 of the act of July 2, 1864, is likewise cited as contemporaneous legislation strengthening the view held by the court. That section provided that property seized or taken on the inland waters of the United States by naval forces should not be regarded as maritime prize, but should be delivered to the officers of the court, as provided in that act, and also in the act of March 12, 1863. § 7 was clearly intended merely to prevent conflicts between the Navy and the authorities enforcing the captured and abandoned property act and the other act authorizing seizure and capture of property in the insurrectionary States. It certainly does not show that Congress intended to restrict the subjects of prize in a subsequent war with a foreign power.

The Government's Objections.

Counsel for the Government contends that the Government takes this property "*jure reipublicæ*, in contradistinc-

tion to prize," urging in support of this that the Government has never recognized by statute property on land as a subject of prize, and that the courts have never so recognized it.

Why learned counsel uses the term *jure reipublicæ* as an opposing term to "by right of maritime prize" can not be understood. This court uses it in the passage quoted in the Government's brief from *The Siren*, 13 Wall. 392, in no such sense: "The United States take captured property not as droits, but strictly and solely *jure reipublicæ*." This is true whether by statutory grant a portion of the proceeds is given to the captors, as under the act of June 30, 1864, or as under existing law (act of March 3, 1899, § 13, 30 Stat. L. 1007), the entire proceeds go to the United States. The repeated addition of the phrase "*i. e.* without condemnation" to the words "*jure reipublicæ*" throughout the brief shows a definite misapprehension of these words, although so exactly defined by this court.

That public property of the enemy taken on land by an exclusively naval force was prize under British admiralty decisions, is established upon the authority of this court in the *Alexander* case. This is expressed, it is true, in the course of the argument and is not essential to a decision of the case; but it is a deliberate conclusion and was reached in the case after a very elaborate review of the authorities. An examination of the briefs of counsel in this case, as reported, will show that nearly all of the known authorities on the subject were cited and considered by the court.

IV. CASCOS AND WRECKING BOATS.

There were captured certain cascos or cargo boats, and two wrecking boats. The court below decided that these were not the subject of prize. Its opinion, as well as the contention of counsel for the Government, was

based upon the idea that only vessels having ship's papers and capable of being taken into a prize court are a proper subject of prize. Independently of that question, this property having been taken and appropriated to the use of the United States, what has hitherto been said relative to the taking and appropriating of property ashore applies and need not be repeated. These cascos and wrecking boats we think should properly be included as vessels. A vessel is defined as follows:

"A ship; a craft of any kind; usually a larger craft than a boat, but in law often construed to mean any floating structure."

Century Dictionary.

But the Revised Statutes of the United States themselves (§ 3) define a vessel to include every description of water craft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

Vessel, in maritime law:

"A ship, brig, sloop, or other craft used in navigation. 1 Brulay Paty tib. 1 p. 100. The term is rarely applied to any water craft without a deck; 3 Mass.; but has been used to include everything capable of being used as a means of transportation by water."

27 La. Ann. 607.

"A floating elevator towed from place to place, and used to transfer grain, has the characteristic of a vessel; Bened 506. So of a scow adapted only for use in port in carrying ballast to and from vessels, having neither steam power nor sails nor rudder; and moving by steam tugs. 3 Fed. Rep. 411; so of canal boats, *id;* so of a scow built for carrying a steam shovel worked by the steam engine of the scow; 30 Fed. Rep. 206; and a barge having no sails, masts or rudder, and used only for the transportation of bricks, suitable only to be towed by a tug; 36 *id.* 607; so of a floating scow fitted with steam appliances for deepening channels; 40 Fed. 353; a steam dredge

53 *id.* 607; 30 *id.* 206; 83 *id.* 840; a barge and scow, 61 *id.* 502; *id.* 476. The means of propulsion makes no difference. 8 Savoy, 211. An open boat is not a vessel, 5 Mass. 120; nor a raft; 14 Fed. Rep. 236; nor a canal boat, 5 Wend. 564."

2 Vol. Bouvier Law Dictionary, p. 1193.

Under prize law of the United States a ship includes a torpedo steam launch. 113 U. S. 747.

Ship.—"A vessel employed in navigation."

Ben Ad. 215.

"Comprehends every description of vessel navigating on any sea or channel, lake or river, to which provision R. S. Title Merchant Marine may be applicable."

4612, 48 Fed. Rep. 312; 119 U. S. 629; 46 Fed. Rep. 204.

"The code declares that commercial partners are those who are engaged in 'carrying personal property for hire in ships or other vessels.' In this sense we understand vessel to mean any structure which is made to float upon the water for purposes of commerce or war, whether impelled by wind, steam or oars."

Chaffe & Bros. v. *Ludeling, et al.* 27 La. Annual Reps. p. 611.

"Nor is there any valid objection to the jurisdiction in this case growing out of the character of the scows, or the uses to which they were adapted and applied. They were adapted only for use in port, and were in fact used in carrying ballast to and from vessels. When taken from vessels by them the ballast was carried to some point on the bay and dumped on the shore. They had neither steam power nor sails nor rudder, and were moved about by steam tugs. In these respects they were not unlike canal boats and barges, although these have rudders. Canal boats are now treated as vessels. While these scows are employed in carrying ballast to or from a vessel, that ballast must be considered as their cargo. They are, as it seems to me, properly to be considered vessels,—instruments of commerce and navigation,—a contract for the repair of which is maritime, because it has relation to

trade and commerce, and 'some connection with a vessel employed in trade.'"

Endner v. *Guco*, 3 Fed. Rep. 413.

"A steam dredge is a vessel within the meaning of the law, and, as such, subject to a maritime lien for supplies. *Huismann* v. *The Pioneer*, 30 Fed. Rep. 449. A barge having no sails, masts or rudders, and used only for the transportation of bricks, suitable only to be towed by a tug. *Disbrow* v. *Walsh Bros.* 36 Fed. Rep. 607. A dredge and her scow are to be treated as one concern, and are subject to libel in admiralty for wages."

Starbuck, 61 Fed. Rep. 512.

"A steam dredge, without motive power, etc. is a vessel and within the admiralty jurisdiction."

Saylor et al. v. *Taylor*, 77 Fed. Rep. 476.

"Are dredges and scows vessels, or goods, wares and merchandise, and subject to the duty imposed by Congress on the latter description of property? This is the only question presented. While it has not been directly passed upon by the courts, it has, I think, been indirectly decided. Dredges and scows are held to be water craft; they are intended for and subject to use only upon the water, and are consequently so shaped and constructed as to be navigated. That they are without independent means of propulsion is immaterial. In this respect they resemble barges and similar vessels. They are held to be within the jurisdiction of admiralty, subject to the laws of navigation generally, and to the provisions of our statutes relating to the subject."

The International, 83 Fed. Rep. 840.

It is urged that because this property was claimed as prize by amendment the claim was an afterthought and should not be sustained. Whether it was an afterthought could in no wise affect the validity of the claim itself, but as the opinion of the court below, as well as counsel for the Government, weighs the fact that the claim was put in by amendment, we state here facts of which the court will take judical notice, that the original libel in this case was filed in July, 1899, before Admiral Dewey

and the ships under his command had as yet returned to the United States. Counsel here did not have full returns of all the property taken and did not feel justified in delaying the filing of the libel, since this could be amended at any time before final decree, to wait for these full returns. After opportunity occurred to talk with the Admiral and the officers under him, it was found that these cascos and floating derricks had been taken, and the libel was accordingly amended to include them.

The argument is made that, because these cascos were owned by native Filipinos they should not be considered a subject of prize, and the Government's brief says:

"These small craft were not the property of people with whom the United States was at war, but apparently of native Filipinos who while claimed by Spain as its subjects, were not really on the Spanish side in the war."

That native Filipinos at the time of this capture were subjects of Spain is too plain a proposition to need argument, as is likewise the question that the property of the subjects of any country with whom we are at war is enemy's property. As said in the *Alexander Cotton Case*, 2 Wall. 422, "this court can not inquire into the personal characters and dispositions of individual inhabitants of enemy territory." The fact that the Government took and treated this property as prize makes it too late for it to set up such a defense here. These cascos, as a matter of fact, were cargo boats, used in the commerce of a populous city, and correspond, as far as use for commercial purposes is concerned, with such craft as lighters, found in the harbors of our cities. Counsel do know as a fact that later on, after the arrival of the army, when we were in full possession and the Government needed cascos, the cascos then available were owned and controlled by, and

their rental secured from, persons in Manila engaged in commercial business.

The contention that these cascos should be exempt rests primarily upon an alleged analogy to fishing smacks. The reason why fishing vessels of a certain character and under certain circumstances, are exempt from capture is clearly expressed in the case of the *Paquete Habana*, 175 U. S. 708:

"This review of the precedents and authorities on the subject appears to us abundantly to demonstrate that at the present day, by the general consent of the civilized nations of the world, and independently of any express treaty or other public act, it is an established rule of international law, founded on considerations of humanity to a poor and industrious order of men, and of the mutual convenience of belligerent states that coast fishing vessels, with their implements and supplies, cargoes and crews, unarmed and honestly pursuing their peaceful calling of catching and bringing in fresh fish, are exempt from capture as prize of war.

"The exemption, of course, does not apply to coast fishermen or their vessels if employed for a warlike purpose, or in such a way as to give aid or information to the enemy; nor when military or naval operations create a necessity to which all private interests must give way.

"Nor has the exemption been extended to ships or vessels employed on the high sea in taking whales or seals or cod or other fish which are not brought fresh to market, but are salted or otherwise cured and made a regular article of commerce."

From the above it will be noted, (1) that the decision draws a distinction between fishing vessels employed merely to give a livelihood to the poor fishermen and those employed in catching fish as a regular article of commerce, and (2) that no fishing smacks are exempt "when military or naval operations create a necessity to which all private interests must give way."

These two exceptions destroy entirely the analogy between these cascos and fishing vessels. These cascos were cargo boats plying in and around the harbor of a populous city. Their use was undoubtedly for commercial purposes. They correspond to lighters and craft of that kind found in our own harbors, used in loading and unloading vessels engaged in commerce. That fact alone would make it clear that they are not exempt from capture. The exception to the rule of liability of enemy's vessels to capture can not be extended beyond the limits of that rule as declared by authorities on international law.

But even if they were similar to such fishing vessels as are exempt, this was certainly a case where naval operations created a necessity to which all private interests must give way. Admiral Dewey with his fleet was in the harbor of a nation with whom we were at war; he was over four thousand miles from home; he had no base of supplies from which he could secure lighters or any vessels needed for loading or unloading or for transferring these stores from the arsenal at Cavite to his ships. There was certainly a military necessity for the taking of these cascos.

The defense recognized in the decision quoted is one pertaining to the owners of the vessels claiming to be prize; it can not be made by the government. These cascos were taken as prize; they were, as prize, appropriated to the use of the government. The government has the vessels, as the result of libellant's acts, and can not, with them in actual possession, declare that the captors can not share because the possession is *ab initio* unlawful. The statute of 1864 certainly made the rights of the captors co-extensive with the rights of the government in the captured property.

This same reason applies to the floating derricks. They

were property afloat appropriated by the government as prize. They were water-borne and were unquestionably a subject of prize.

As to the argument that these boats should not be considered as prize because they did not have ships' papers, could not be sent to a prize court, and so on, these provisions are all directory; they do not define prize; they only apply when the prize is of a character that can be sent in with its ship's papers. It was customary all through the civil war, and has been customary in proceedings arising out of the war with Spain, to condemn as prize water-borne property, without question as to whether or not it could be sent in to a prize court. And this is recognized by special statutory provisions in R. S. §§ 4615, 4625.

Then, too, the inability to take the boats into a prize court of the United States is only because of the distance across the Pacific. Congress could have erected a prize court in Manila at any time after the treaty of Paris was ratified.

SUMMARY.

It is respectfully submitted that the decision below should be affirmed:

(1) As to the three gunboats, because they were captured and not destroyed;

(2) As to the property taken from sunken vessels because, being in the possession of the United States as the result of libellant's capture, the statute gives him and his officers and men a share in their value.

And that it should be reversed:

As to the stores taken ashore and the cascos, because the United States now holds them as "captures made as prize, and, so holding them, can not deny a share to the captors."

THE STOVELL APPEAL.

The appeal of Stovell brings up a question of distribution. The same question came before the Court of Claims in settling the distribution of the bounty money for the vessels destroyed, under Revised Statutes § 4635. Stovell's petition was dismissed with an opinion by the Court of Claims (36 C. Cls. 392). The decision of the Court of Claims was followed by the Supreme Court of the District of Columbia in the prize cause. By stipulation, the record in the Court of Claims was made the record in the Supreme Court of the District of Columbia, so far as it bears on the *Stovell* case, and that has been incorporated in the record on appeal in this court. The findings of fact by the Court of Claims are therefore upon the very record which is in this court. These findings and the opinion of the court state the facts so clearly and enunciate the law so conclusively, that in lieu of an argument, we submit these as representing our views on the issues here involved.

Findings of Fact of the Court of Claims.

I.

The claimant was captain or master of the original crew of the *Nanshan*, which was a British merchant vessel, purchased by Admiral Dewey, at Hong Kong, under authority from the Secretary of the Navy, in April, 1898. The vessel was not commissioned, but was registered as an American steamer, and the original crew was shipped in the American merchant service. The original crew was employed to handle the ship; and on account of what might occur at Manila Bay, the officers and men were promised and received double the wages they had theretofore been paid in the British merchant service. The crew was not rated in the United States Navy, and

the double wages were not the rates of pay fixed by the President under the Revised Statutes, § 1564. This arrangement as to the employment and the payment of the crew was the result of an agreement made by Admiral Dewey with the original officers of the *Nanshan*. A monthly list of the names and wages, in Mexican money, of the original crew, was made by the original captain or master, the aggregate amount of which was received by him from the pay inspector of the fleet in a lump sum, reduced to the value of American gold, which money said original captain distributed to his original crew.

Admiral Dewey placed on board a naval officer, Lieut. Ben. W. Hodges, four enlisted men, and two mounted one-pounder guns. The master of the *Nanshan* remained on board, and under him were shipped the merchant seamen as a crew. The officer exercised control over the ship and gave all orders concerning it. The *Nanshan* did not approach the Spanish fleet in the battle of Manila near enough to enable her guns to be of service. The guns were mounted on her as a protection from boat attacks, but not for offensive operations.

II.

At the time and during the battle of Manila Bay, Lieut. Commander Ben. W. Hodges had been detailed as aforesaid with four men of the navy for duty on said vessel, and was so engaged on said vessel as above stated, during the time of the battle of Manila Bay. The ship, at the time of the battle, was loaded with 3,000 tons of coal. The duty of the naval captain on board said ship was to take general charge of the vessel, execute all orders from the flagship, controlling the movements of the *Nanshan*, and to obey all orders given by the Admiral, direct or through his flag lieutenant, in general to control the

movements of the *Nanshan*, but not to interfere with internal discipline in such things as loading and discharging cargo, but to leave those matters to the captain of the ship, who was the captain of the ship before she was bought by Admiral Dewey.

III.

The *Nanshan* crossed the China Sea with the fleet and was a part thereof. She kept her position in the fleet, and after the Admiral stopped the fleet at Subig Bay he ordered her commander to come on board the flagship for his final orders, who afterwards returned to the *Nanshan*. The fleet started in single column, the *Olympia* leading, followed by the *Baltimore*, the *Raleigh*, the *Petrel*, the *Concord*, the *Boston*, the *McCullough*, the *Nanshan*, and the *Zafiro*, passing the forts in that order. The forts on the south side of the channel fired upon the fleet as they were entering Manila Bay, and the *Nanshan* passed through that fire. The *Nanshan* was in reserve during the action, within signaling distance. The ship had on board two 1-pounders, taken from the flagship *Olympia*, and 360 rounds of ammunition for these guns; also eleven Lee rifles from the *Raleigh*, and eleven revolvers, with a suitable amount of ammunition; also two boats rigged out ready to lower and pick up men if it was found necessary to do so. The *Nanshan* was a heavy ship, being loaded to the underwriters' mark with coal. The *Nanshan* was not at any time within effective range considering the guns she carried, nor directly attacked.

IV.

At the time and during the battle of Manila Bay the *Nanshan* was between four and five miles from the Spanish vessels that were engaged in that action. She was within

signal distance of the fleet that effected the destruction of the Spanish vessels, but was not in such condition as to afford effective aid, her guns not being able to produce any effect upon the Spanish vessels. She was distant from the American fleet at time of battle about three miles. She was ordered to lay off in the bay clear of the fleet. She could not have been brought within effective range because her guns were too light. The *Raleigh* was detailed as a special guard in case the reserve division was attacked separately by the enemy. The *Raleigh* had orders to go to its assistance in case of necessity.

V.

The *Nanshan* was purchased by the United States in April, 1898, under the following order:

"WASHINGTON, *April 6, 1898.*

"DEWEY, *Hong Kong:*

"Purchase immediately *Nanshan* and one more vessel for supplies. Charge special appropriation. * * * Enlist for special service, if possible, one year, unless sooner discharged, the crew of. Detach and order assume command of each an officer. Arm if possible. * * *

"LONG."

"HONG KONG, *April 19, 1898.*

"SECRETARY OF THE NAVY, *Washington:*

"*Zafiro* and *Nanshan* have not been commissioned. Have been registered as American steamers. Commissioned officers command each vessel; four men; armed. Original officers and men have been shipped merchant service. Both vessels have been cleared for the Bonin Islands, North Pacific. I believe present status preferable in the event of hostilities. They can obtain supplies and coal in Shanghai for men-of-war.

"DEWEY."

At the time and during the battle of Manila the *Nanshan* was between 4 and 5 miles of the Spanish fleet en-

gaged in that action. She was within signaling distance of the fleet that effected the destruction of the Spanish vessels, but was not in such condition as to afford effective aid, her guns not being able to produce any effect on the Spanish vessels. She was ordered to lay off in the bay clear of the fleet. She could not have been brought within effective range, because her guns were too light.

The determination of the question at issue in this proceeding is to settle, by construction of the statute which regulates the distribution of prize money, the right of the claimant. § 4632 defines the vessels which are to share in the distribution of prizes, and the same law which determines that distribution determines the distribution in this case. The section provides as follows: "All vessels of the Navy within signal distance of the vessel or vessels making the capture under such circumstances and in such condition as to be able to render effective aid, if required, shall share in the prize." § 4614 defines what is understood by the law as "vessels of the Navy." "The term 'Vessels of the Navy,' as used in this title, shall include all armed vessels officered and manned by the United States and under the control of the Department of the Navy."

Did the *Nanshan*, at the time of the battle of Manila, have impressed upon her the conditions and characteristics required and recognized by the statute? In order to participate in the result of that victory, she must have been in such a condition as to enable her to render effective aid, if it was required. The findings of fact show that she was not in such condition. Her condition indicates that she was not intended or expected to participate with the belligerent force employed in the battle; but, upon the contrary, that she was placed in reserve so as to be safe in case of certain conditions which might arise as an incident of the engagement. She was performing the functions of a collier, and as a matter of fact at the time of the battle needed protection, rather than having the qualifications of aggressive warfare. Does she come within the definition of § 4614, in being an "armed vessel, officered and manned by the United States?" The crew she had on board was not of the United States Navy,

never having been enlisted, but simply employed by proper authority to perform manual labor, incident to the necessities of the fleet, which sailed from Hong Kong, and which finally destroyed a part of the Spanish navy. Can she be included in the term "armed vessels" simply because she had on board two 1-pounders and some small arms? Courts must look at substantial and not technical conditions in determining the rights of parties. It can not be inferred from her armament that she was eqipped for any purpose of aggression, and that whatever protection she had from her armed condition was for the purpose of defence rather than attack.

Her condition, instead of having the power and qualifications of aggression, had the marked characteristics of helplessness.

Although she was within signal distance of the vessels making the capture, she was not in such a condition as to be able to render effective aid, and she was not kept in the relation which she sustained to the engagement for strategic purposes, but for the purpose of protection to herself and the incident protection of the rest of the fleet as the source of their coal supply.

The claim of the captain and crew of the *Nanshan* to share in the bounty is further embarrassed by the difficulty arising under the fifth clause of § 4631, in which it is provided, "After the foregoing deductions the residue shall be distributed and proportioned among all others doing duty on board, including the fleet captain, and borne on the books of the ship in proportion to their respective rates of pay in the service."

In this case the crew of the *Nanshan*, outside the detailed men of the Navy, were borne on the books of the ship as merchantmen. Their rates of pay were the result of a contract made by the Admiral of the Navy, at the time they were employed at Hong Kong, as laborers and not as soldiers or enlisted men.

They were paid from a lump sum given to the claimant by the proper officer of the Navy, in pursuance of the terms of the contract then subsisting between them and the United States. The distribution contemplated by the statute is to be made "according to their respective pay

in the service." § 1569 provides, "The pay to be allowed petty officers, excepting mates, and the pay and bounty upon enlistment of seamen, ordinary seamen, firemen and coal heavers in the naval service shall be fixed by the President: *Provided*, That the whole sum to be given for the whole pay aforesaid, and for the pay of officers and for the said bounties upon enlistments shall not exceed for any one year the amount which may in such year be appropriated for such purposes."

By the provisions of this statute it is the duty of the President to fix the pay of seamen, firemen and coal heavers in the naval service, and such pay is to be regulated in each year by the amount which may in such year be appropriated for such purposes. In this case no rate of pay had been established by the President, and the basis upon which the men engaged in the alleged military service during the naval engagement is wanting, but it is sought to base the ratio of such compensation upon the pay which is the result of a contract, and not upon the pay provided by Executive orders. Being by law without rates of pay in the service, can the rate of pay established by contract perform the function of the rate of pay established by Executive order?

It has been decided in this court in the Manila Bay case and also in the Santiago case that "additional pay" is the full compensation for detention, and does not increase pay allowances. Respective rates of pay refer to the regular rates of pay, thus giving construction to §§ 1572 and 1422, on the theory that the rate of pay forming the basis upon which the distribution is to be made is the regular pay in the Navy.

On the argument and in the brief of counsel the court's attention is called to the case of the *Ceylon*, Mulac (1 Dod. p. 105), in which it is held, in substance, that the employment of a vessel in the public military service of the enemy, by those who have competent authority so to employ her, "is a sufficient setting forth for war" under the prize act, though the vessel may not be furnished with any formal commission of war. The facts upon which that decision is predicated are briefly as follows:

Conclusion of Law.

Upon the foregoing findings the court determines as a conclusion of law that the claimant is not entitled to share in the bounty, and the Auditor is instructed to omit him from the distribution.

Opinion of the Court of Claims.

WELDON, J., delivered the opinion of the court:

The claimant filed a petition, No. 3892, to share in the bounty money as incident to the destruction of the Spanish fleet in Manila Bay on May 1, 1898, and the court is asked to instruct the Auditor as to the right of the claimant to participate in that bounty.

In the case of *Admiral Dewey* v. *The United States* (35 C. Cls. R. 172) it was found by the court that on May 1, 1898, an engagement took place between the following vessels of the United States Navy, to wit, the *Olympia*, the *Baltimore*, the *Boston*, the *Raleigh*, the *Concord*, the *Petrel*, the *McCullough*, the *Nanshan*, and the *Zafiro*, and the following vessels belonging to the King of Spain, to wit, *Reina Cristina*, the *Castilla*, the *Don Juan de Ulloa*, the *General Lezo*, the *Marques del Duero*, *Argos*, *Velasco*, the *Isla de Mindanao*, the *Don Juan de Austria*, *Isla de Cuba*, the *Isla de Luzon*, and two torpedo boats. In that proceeding no contest was made as to the ships which participated on the part of the United States in that engagement; but it is now insisted by counsel appearing for other vessels that the *Nanshan*, notwithstanding the finding of the court in that case, has no right to participate, and that the crew thereof is not to be taken into account in the distribution of the money arising from that destruction. The question in the case of Admiral Dewey was not as to whether certain ships participated, but whether the Admiral, as the commander of the American fleet, was entitled as the basis of his compensation to the sum of one hundred or two hundred dollars as represented by the men on board of the Spanish ships; and the parties now in interest in this proceeding were not called upon, and did not litigate as to what American seamen

or soldiers were entitled to share in the bounty as the crews of the different ships.

This being a proceeding to distribute the fund among the persons entitled to the same, excluding the commander of the fleet, it is competent and proper for the court now to consider upon the evidence in the case the rights of the claimant as against the officers and men of other ships participating in the Manila engagement. The findings of fact in that case are not conclusive upon the rights of the parties in this case. It may be that upon further consideration the finding may be changed, that finding having only the force of an interlocutory order, and the subject-matter of this dispute still being before the court. It was held in the case of *Sampson* v. *The United States* (36 C. Cls. R.—) that the order made in said case was subject to change until a full disposition of the matter.

The facts found by the court show, that the claimant was captain or master of the original crew of the *Nanshan*, which was a British merchant vessel, purchased by Admiral Dewey at Hong Kong, under authority of the Secretary of the Navy, in April, 1898. The vessel was not commissioned, but was registered as an American steamer, and the original crew was shipped in the American merchant service. The crew were employed to handle the ship, and the officers and men were promised and received double the wages they had theretofore been paid in the British merchant service. They were not rated in the United States Navy, and the double wages were not the rates of pay fixed by the President under authority of Revised Statutes, § 1564. The arrangement as to the employment and payment of the crew was the result of an agreement made by Admiral Dewey with the original officers of the *Nanshan*. A monthly list of the names and wages of the crew, in Mexican money, was made by the original captain or master, the aggregate amount of which was received by him from the pay inspector of the fleet in a lump sum, reduced to the value of American gold, which money the captain distributed to his original crew.

Admiral Dewey placed on board a naval officer, Lieut.

Benj. W. Hodges, and four enlisted men, and two mounted 1-pounder guns. The master of the *Nanshan*, Capt. Edwin F. Stovall, remained on board, and under him were shipped the seamen, as aforesaid. The naval officer exercised control over the vessel and gave all orders concerning her. The merchant captain was merely his executive officer, being familiar with the crew. The *Nanshan* did not approach the Spanish fleet during the battle of Manila near enough to enable her to be of any service. The guns were mounted on her as a protection from boat attacks, but not for offensive operations. At the time and during the battle of Manila Lieut. Benj. W. Hodges had been detailed as aforesaid with four men of the Navy for duty on said vessel, and was so engaged on said vessel as above stated at and during the time of the battle. The *Nanshan* was loaded with 3,000 tons of coal. The *Raleigh* was detailed as a special guard in case the reserve division was attacked separately by the enemy. The duty of the naval captain on said ship was to take general charge of the vessel, execute all orders from the flagship controlling the movements of the *Nanshan*, the handling of the guns, and the signaling, but not to interfere with the internal management and discipline of the ship and such things as loading and discharging cargo.

After the vessel was bought by Admiral Dewey, the *Nanshan* crossed the China Sea with the fleet and was a part thereof. She kept her position in the fleet, after the fleet stopped at Subig Bay the Admiral ordered her commander to come on board the flagship for his final orders, afterwards returning to the *Nanshan*. The fleet started in single column, the *Olympia* leading, followed by the *Baltimore*, the *Raleigh*, the *Petrel*, the *Concord*, the *Boston*, the *McCullough*, the *Nanshan*, and *Zafiro*, passing the forts in that order. The forts on the south side of the channel fired upon the fleet as they were entering Manila Bay, and the *Nanshan* passed through that fire. The *Nanshan* was in reserve during the action, within signaling distance. She had on board two 1-pounders taken from the *Olympia*, with 360 rounds of ammunition for those guns. Also eleven rifles from the *Raleigh*, and eleven revolvers with a suitable amount of ammunition, and two

boats rigged ready to lower to pick up men if it was found necessary to do so. The *Nanshan* was a heavy ship, being loaded to the underwriters' mark with coal.

An East India ship had been captured by French frigates and carried to the Isle of Johanna, where she was refitted and supplied with two additional cannonades and a French crew consisting of seventy men. From that island she was conveyed by the French to the Isle of France. On her arrival off that place she was anchored by the British frigate *The Nereid*, and, having fired several shots in return at the frigate and fort, she passed on to her anchorage at another point. While lying in that port she was attacked by the British squadron, when, with the assistance of other French ships, she succeeded in repelling the attack and destroying the British squadron. She was then taken to another port, dismantled, and fitted out as a prison ship for English prisoners of war, in which condition she was found at the time of the capture of the island. The question was whether this ship was "sufficiently set forth for war" to come within the prize act, which directs restitution of British ships recaptured from the enemy, unless they shall have been "set forth as ships or vessels of war by the enemy."

The court held in that case, by Sir William Scott, that she came within the phraseology of the statute "set forth as ships or vessels of war by the enemy."

The question presented and decided in that case is not the question submitted to the consideration of the court in this proceeding. The question is not whether the vessel belonged to the United States as a part and parcel of the war equipment, but whether, in the battle of Manila, she was so constituted, equipped, and conditioned as to come within the letter or spirit of the statute entitling vessels to participate in the bounty, upon the theory that they participated in the battle.

The claimant in this case and his crew were not in the military service of the United States. They had not been enlisted or hired to perform and discharge military duty. They were not identified with the naval force, in a military sense, which fought the battle and won the victory at Manila.

It would be an unjust discrimination against the men who were in the service, subject to all the restrictions and requirements of that service, and all the dangers incident to that battle, to allow the demand of the claimant, who did not undertake, by any obligation, to perform the duties and discharge the functions of a soldier.

The men who participated in that battle and who contributed to its success as a great American victory are entitled to share the glory and participate in the bounty of the engagement, without having that glory lessened or dimmed, or that bounty impaired by men who were simply employed to perform the manual functions of a ship, which, in the hour of danger to the forces of the United States, was an impediment instead of a help in the prosecution of belligerent operations against the enemy.

For these reasons the Auditor will be instructed not to allow the claim of the claimant in the distribution of the proceeds due to the men and officers of the United States Navy who fought and won the battle of Manila.

Conclusion.

For these reasons we ask that the decree of the court below dismissing the petition of Stovell be affirmed.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1902.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902.

EDWIN F. STOVELL, On Behalf of Himself and the Officers and Crew of the U. S. S. Nanshan, *Appellant*,

vs.

GEORGE DEWEY, Admiral, Etc., U. S. Navy, *Appellee.*

No. 656.

BRIEF FOR APPELLANT, EDWIN F. STOVELL.

Statement of Case.

As this case was tried before the Court of Claims upon the same evidence as it will be tried upon in this Court, the statement of the case made by Chief Justice Nott in the Court of Claims, is adopted by the appellant.

"On the 6th of April, 1898, the Secretary of the Navy sent the following despatch to Commodore Dewey, then at Hongkong:

"Washington, April, 1898.

"Dewey, Hongkong:

"Purchase immediately Nanshan and one more vessel for supplies. Charge special appropriation. * * * Enlist for special service, if possible, one year, unless sooner discharged, the crew of. Detach and order assume command of each an officer. Arm, if possible.

Long."

On the 19th of April, Commodore Dewey cabled the following despatch to the Secretary of the Navy:

"Hongkong, April 19, 1898.

"Secretary of the Navy, Washington:

"Zafiro and Nanshan have not been commissioned. Have been registered as American steamers. Commissioned officers command each vessel; four men; armed. Original officers and men have been shipped, merchant service. Both vessels have been cleared Bonin Islands, North Pacific. I believe present status preferable in event of hostilities. They can obtain supplies and coal in Shanghai for men-of-war.

Dewey."

(Report, Secretary of Navy, 1898, Vol. II, p. 66.)

After the purchasing of the vessel and the shipping of her crew, Commodore Dewey detailed Lieut.-Commander Benj. W. Hodges to take command of the vessel. The orders of the Commodore were verbal. They were, as detailed by Lieutenant-Commander Hodges, as follows:

"I reached Hongkong on the night of April 10, 1898, and reported to Commodore Dewey on the Olympia, on the morning of the 11th—the next morning. He ordered me to go on board the Nanshan and take with me four enlisted men. He told me that later on he would fit the Nanshan out with guns from the other ships of the fleet. He told me that the Nanshan was a ship that he had just bought and that she was loaded with the best quality of Welsh coal, and that she had 3,000 tons on board. He

said that he had offered the men of the ship double pay to stay on board of her. My duties were to take general charge of the ship and obey all orders that either he gave me direct or thorough the flag-lieutenant, and to execute all the movements that were ordered from the flag-ship, and in general to control the movements and actions of the Nanshan, but not to interfere with the internal discipline, and such things as loading and discharging cargo, but to leave those matters in the hands of Captain Stovell, who was the captain of the ship, before she was bought and accepted by Admiral Dewey" (R., p. 185).

The movements of the Nanshan towards and at Manila are thus described by her commanding officer:

"The Nanshan was an integral part of the fleet, as much so as any other ship. She kept her position in the fleet all the way across, and after Admiral Dewey stopped the fleet at Subig Bay and ordered the commanding officers to come on board the flagship for his final instructions, I went over and received his instructions for entering Manila Bay, and then returned to the Nanshan and the fleet started in single colum, the Olympia leading, followed by the Baltimore, the Raleigh, the Petrel, the Concord, the Boston, the McCullough, the Nanshan, and the Zafiro. It was a regular fleet formation, and it was in this order that we passed the forts. The forts on the south side of the channel fired on the ships of the fleet as they were going into Manila Bay, and the Nanshan and the Zafiro passed through the whole zone of fire" (R., p. 185).

The fleet was divided by Commodore Dewey into three divisions, and the Nanshan was assigned to the third division. Lieutenant-Commander Hodges thus testifies as to her part in the engagement:

"After passing the forts, the third division, of which the Nanshan was one, came up on the left flank of the other ships and steamed up in that order until we saw the lights of the city of Manila ahead. The order was then

given by the flag-ship to stop. The whole fleet stopped without anchoring and lay still untill early daylight. At daylight the Spanish forts at Manila and Sangley Point opened fire on the fleet, and as soon as the land and the surroundings could be made out clearly, the Admiral made signal for the first and second divisions to follow the flagship. This left the McCullough, Nanshan and Zafiro, which comprised the third division, in reserve, while the first and second divisions steamed up and brought on the action with the Spanish fleet. These three ships stayed in reserve during the time of the action, within easy signal and supporting distance, and the Nanshan all that time was ready to join in battle in case she was ordered to do so or to render assistance to any of her ships. The flagship at 7.30 in the morning made siginal to withdraw from action. They steamed out close to where we were lying and signaled for the third division to take position as before. At 11.30 the first and second divisions steamed into Sangley Point and renewed the action with the batteries on shore and such of the Spanish ships as were still in condition to fight, and again the Nanshan lay ready to obey any signal that might have been given. It was about 1 p. m. when the Spaniards hoisted the white flag at the naval station of Cavite and the Admiral then made signal to anchor at discretion. The flagship steamed up to the city of Manila and I gave orders for the Nanshan to steam up, and we went past the flagship, and I anchored closer to the city than she was" (R., p. 186).

The first and second divisions during the action formed a firing line 2,500 yards distant from the Spanish vessels (R., p. 192). The third division formed a line 2,500 yards in the rear of the first and second divisions. Many of the Spanish guns had a range of more than 5,000 yards, and the third division was within range of shot that might have passed over the fleet (R., p. 195).

The Nanshan did not fire during the engagement, and her fire, if directed at the Spanish forts or vessels would have been ineffective from the position which she occupied.

She was able, in the opinion her commanding officer, to "sink a torpedo boat or whip quite a number of the little Spanish gunboats, which we knew the Spaniards had there. They were known to have fourteen or fifteen boats scattered around the islands, and in my opinion she could have whipped anything such as the Callao and the Urdaneta." Admiral Dewey called her commanding officer's attention to the fact that she had a good "ram bow" (R., p. 190).

Assignment of Errors.

I. The court erred in decreeing that the Nanshan (and with her the Zafiro) did not participate in the captures growing out of the Battle of Manila Bay, and was not entitled to share in the prize property.

II. The court erred in decreeing that the Nanshan (and with her the Zafiro) was not an armed vessel of the United States within signal distance of the vessel or vessels making the captures, at the Battle of Manila Bay, on May 1, 1898, under such circumstances and in such condition as to be able to render effective aid, if required, and was not entitled to share in the prize property.

III. The court erred in holding that the Nanshan (and with her the Zafiro) was not entitled to a share in any of the prize property captured at the Battle of Manila Bay, on May 1, 1898.

Argument.

I.

WAS THE NANSHAN A VESSEL OF THE NAVY?

It may be observed that when Admiral Dewey appointed a naval board of appraisal and survey, after the Battle of Manila Bay, the Nanshan and Zafiro were treated by

the Board of Survey as United States ships engaged in capturing enemy's property (R., pp. 111, 112).

When Admiral Dewey filed his libel in prize, he set out the fact that the Nanshan and Zafiro were armed vessels, officered and manned by the United States, and under the control of the Navy Department, and that they were a part of the squadron under his command at the Battle of Manila Bay (R., p. ii). Not until the intervening libel of Edwin F. Stovell was filed, on the 26th day of March, 1901 (R., p. xiii), was it contended that the Nanshan and Zafiro were not a part of the effective fighting force of the Navy at that battle. The fact that the officers of the United States Navy never questioned the right of these vessels to share in the prize money for three years, but on the contrary admitted their status to be such as would entitle them to share, goes far to show that the facts were such as would entitle them to share in the property captured.

The decision in this case, depends upon the construction of the following sections of the R. S. U. S.:

"Section 4614. The term 'Vessel of the Navy,' includes all armed vessels officered and manned by the United States under the control of the Department of the Navy."

"Section 2632. All vessels of the Navy within signal distance of the vessel or vessels making the capture, under such circumstances and in such condition as to be able to render effective aid, if required, shall share in the prize."

"Section 4631. * * * the residue shall be distributed and proportioned among all others *doing duty on board* * * * and borne upon the books of the ship, in proportion to their respective rate of pay in the service."

Section 4614, R. S. U. S., makes all armed vessels

officered and manned by the United States, and under the control of the Department of the Navy, vessels of the Navy. The Nanshan was purchased by Admiral Dewey under instructions from Secretary Long, commanding him to enlist her crew for special service, and detach and order an officer to her command, and to arm her, if possible (Report, Secretary of Navy, 1898, Vol. II, p. 66).

On April 19, 1898, Admiral Dewey cabled the Department as follows:

"Secretary of the Navy, Washington:

"Zafiro and Nanshan have not been commissioned. Have been registered as American steamers; commissioned officers command each vessel; four men; armed. Original officers and men have been shipped, merchant service. Both vessels have been cleared for the Bonin Islands, North Pacific. I believe present status preferable in the event of hostilities. They can obtain supplies and coal in Shanghai for men-of-war" (R., p. 178).

It will be observed from this despatch that it was the opinion of Admiral Dewey, before the Battle of Manila Bay, that the Nanshan was *armed*. The reason for not following out the instructions of the Secretary of the Navy to the letter and enlisting the crew, was because he could send them to the Chinese ports for supplies or coal, which could not be done in case the crew was regularly enlisted. This was a matter of expediency with Admiral Dewey, but, to all intents and purposes, he carried out the instructions of the Secretary. He made the Nanshan a part of the fleet; he armed her with two long 1-pounders, eleven rifles, and eleven revolvers and put her under the command of a regular naval officer.

Lieutenant-Commander Hodges was detailed to her command, and the regular crew was retained in the service of the United States. Four enlisted men were brought on board by Lieutenant-Commander Hodges. It

is admitted that the regular crew was composed of Englishmen and Chinese, but they were in the service of the United States under a contract made by Admiral Dewey, carrying out the instructions of the Secretary of the Navy, who acted for the President. They were in danger of being sunk, both when they entered the bay and during the battle, and if the Nanshan was not a vessel of the United States Navy, they were exposed to the penalties of piracy.

It is true that the armament of the Nanshan was light, but this grew out of the necessities of the case. There was no shipyard convenient, and the only guns to place upon this vessel were such as could be spared from the other vessels of the fleet. Even with the light armament she had, it would have been absolutely impossible for the four enlisted men to have handled the two guns, to say nothing of the rifles and revolvers. These guns could not have been operated without the assistance of the regular crew, and placing them on board shows that Admiral Dewey intended to use the regular crew in the battle should the necessity arise. The original crew was shipped in the merchant service for the benefit of the entire fleet. During the battle their danger was great, and they were subject to the absolute command of the Admiral. It is difficult to see why their equity is not as strong as that of any of the enlisted men of the fleet.

That the Nanshan was a vessel of the navy is established by both reason and authority. Section 4614, R. S. U. S., says "that the term 'vessel of the navy' includes all armed vessels, officered and manned by the United States and under the control of the Department of the Navy." The Nanshan was purchased by the United States out of the emergency fund, she was armed, officered and manned by the United States through Admiral Dewey, and was an integral part of the squadron at the Battle o

Manila Bay. The above section does not require that the crew should be enlisted, but only that the vessel should be officered and manned by the United States, and under the control of the Navy Department. Can it be said that a vessel is not manned by the United States, when its sailors are employed and paid by the Government of the United States? Can it be said that she was not an armed vessel of the United States, when the Secretary of the Navy ordered her to be purchased and armed; the Admiral in command reported that he had armed her; and it appears from the evidence that, so far as circumstances would permit, he had acted in accordance with the instructions of the Department; and that before and during the Battle of Manila Bay she was a vessel of the squadron, acting as a unit in the capture of the Spanish fleet?

The Nanshan falls within the express terms of the law defining a vessel of the Navy.

It was not necessary that this vessel should be regularly commissioned, even if sending an officer to command her and raising the flag, did not have this effect. The power to convert merchant vessels into vessels of war has been possessed always by commanding officers. This is illustrated by the decision of Sir William Scott in the case of the Georgiana. This vessel was captured by the Essex, manned and armed with guns from the captor, and sent on a cruise. Subsequently she was recaptured, whereupon a claim was interposed by the owners. The English prize law required the return of English ships to their owners, unless they had "set forth as ships of war by the enemy." The court held that it was not necessary that she should have been formally commissioned to make her a vessel of war, but only that she should have been employed in the public military service of the enemy, by those who had competent authority to so employ her, and

that the commander of the Essex possessed such authority.

The Georgiana, 1 Dod., 401.

In the case of the Ceylon, 1 Dod., 115, the same learned Judge says:

"We know extremely well that in remote parts of the world, where domestic authority can not be immediately resorted to, commanders are, of necessity, vested with larger powers than are usually entrusted to them when employed upon European stations,"

and held that the Ceylon having been equipped by a naval officer, was a vessel of war. In the case at bar, Admiral Dewey was not only in a remote part of the world, but he was expressly ordered to enlist this vessel in the service of the United States.

Under both the written law and the authorities, the Nanshan was a vessel of the Navy of the United States.

II.

IS THE NANSHAN ENTITLED TO SHARE IN PRIZE MONEY?

Section 4632, R. S. U. S., provides as follows:

"All vessels of the Navy within signal distance of the vessel or vessels making the capture, under such circumstances and in such condition as to be able to render effective aid, if required, shall share in the prize."

Before discussing this section it will be useful to consider the English prize law, in the light of the decisions of Lord Stowell. The Act of 13th George II, Chapter 4, provided that the officers, seamen, marines and soldiers, "on board every ship or vessel in His Majesty's pay should have the sole interest and property in all and every

ship, vessel, goods and merchandise which they *shall take.*" Under the express words of this statute, the right to share in the prize was limited to the officers and crew of the ship which *shall take* the vessel of the enemy. Lord Stowell construed this statute so as to bring within its terms a constructive taking. Naval vessels in sight, and associated in the common enterprise of capturing a particular enemy were held to be within the statute, although they took no part in the actual taking. Holding themselves in readiness under general orders, and the squadron acting as a unit under a general plan of cooperation, they were considered as constructively engaged in the capture, although inactive.

The Guilliame Tell, 1 Edw., 11.
The Empress, 1 Dod., 373.
The Vryheid, 2 C. Rob., 20.

Naval vessels were also held to be parties to the taking when they were in sight, under such circumstances as to occasion intimidation to the enemy, and encouragement to a friend.

La Melanie, 2 Dod., 125.

It is apparent that Section 4632, R S. U. S., is based upon this English statute, as interpreted by Lord Stowell. If the vessel was in sight and taking part in the general operations of the squadron, she was entitled to share in the prize. If her activity, size, or general appearance was such that she may have alarmed the enemy, she was likewise entitled to share in the prize, notwithstanding the fact that she may have been at the time temporarily unable to assist in the fight on the account of the unfavorable condition of the tide or wind.

There was no question that the Nanshan (and with her

the Zafiro) was within signal distance of the entire fleet during the battle. That she was under such circumstances and in such a condition as to be able to render effective aid, if required, we think clearly demonstated by the evidence. Her commanding officer testified that with the two long 1-pounders, she could sink a torpedo boat, and probably whip a number of the small gunboats, with which the Islands were infested (R., p. 190). If she could do this she certainly added materially to the fighting force of the squadron, and must have been considered a dangerous ship by that portion of the opposing squadron which might have been sent out to destroy with torpedoes the larger ships.

The question is, what would have been effective aid, if it had been required during the battle? If a torpedo boat or gunboat had stolen out with the object of using torpedoes upon the fleet, would it not have been effective aid if the Nanshan had frustrated this intention by sinking her? If the exigencies of the battle had required that one of the enemy's vessels should have been rammed, would it not have been effective aid, if the Nanshan had been used for that purpose? If the Olympia, or other vessel of the fleet, had been disabled by the fire of the enemy, and the Nanshan had been called upon to tow her out of range of the enemy's guns, would not this have been effective aid? If an American vessel had been sunk, and the boats of the Nanshan had been successful in saving a part of her fighting force so that they could have been transferred to the guns of another vessel, would not this have been effective aid? If the boats of the Nanshan had picked up men in the water, belonging to the other ships, thus rendering unnecessary the withdrawal of men from the guns of the American ships, would not this have been effective aid?

It must not be overlooked that the Battle of Manila

was fought by the squadron as a unit. The Nanshan was an important part of that unit, although the place assigned to her in the battle was not very prominent. She was kept in reserve, along with the Zafiro and McCullough, responsive to the signals of the Admiral. She was ready to enter into the engagement at any time she might be called upon to do so. The battle was not fought or won by any particular vessel, but by the fleet, acting in unison, carrying out the general plan of cooperation, and thus making certain the result of the battle. It was necessary that some vessels should reserve their fire, and stand ready to answer to any emergency which might arise. That the Nanshan was not called upon was not the fault of the commander or crew of the vessel. It was simply because the course of the battle did not render her services necessary. During the entire time she was within range of the Spanish ships and forts, and ready to act when called upon. Under the circumstances, her crew is entitled to share in the fruits of victory.

"They also serve, who only stand and wait."

III.

IS THE ORNGIAL CREW ENTITLED TO SHARE IN PRIZE MONEY?

Section 4631 provides, after making certain deductions that "the residue shall be distributed and proportioned among all others *doing duty on board* * * * and borne upon the books of the ship, in proportion to their respective rate of pay in the service."

Under this section, all those "doing duty on board," are entitled to share in the prize money. The books of the ship are but the usual evidence of those "doing duty on board."

This court says in the Steever Case:

"Nor is it material that there was no affirmative proof that the launch had any books. The keeping of books is not made a condition of the right of any vessel to share in prize money. The books of the ship are but the usual evidence of *service on board*, and neither the omission to keep books, nor the neglect of the proper officers to enter names upon them can be held to cut off those lawfully assigned to *duty on board and actually doing such duty.* * * * As to the other officers and men, *the doing duty on board* is sufficient *prima facie* evidence, at least that they belonged to the launch and were entitled to share in the prize money."

Steever v. U. S., 113 U. S., 753.

The same construction was adopted in the case of the S. S. Twickenham, by Judge Locke (no opinion) of the District Court of the Southern District of Florida. (R., p. 184.)

The decision in the Rita is also in point. The Yale was chartered by the United States during the last war. She was officered by two naval officers, twenty-five marines, and her regular officers and crew, who were not commissioned by or enlisted in the service of the United States.

The Rita was captured and the marines opposed the right of the regular crew to share in the prize money, contending that the words "in the service" meant in the regular naval service. But the court held that these words meant nothing more than that the distribution should be limited to those aboard the ship; that although not formally enlisted, they were in the service of the Government, and entitled to share in the prize money.

The Rita, 89 Fed. Rep., 766.

It is true that the crew of the Naushan did not have a

rate of pay in the regular naval service, but they did have a rate of pay in the service of the United States. That rate was fixed by Admiral Dewey under the instructions of the Secretary of the Navy, who was discharging a part of the executive duties of the President, and was to all intents and puposes fixed by the President.

These men were also "borne upon the books of the ship." The pay-roll, and merchant enlistment papers (R., pp. 184, 176) constituted such books within the meaning of section 4631. The neglect of the officers to keep books can not cut off those lawfully doing duty on board from sharing in the prize money.

Steever v. U. S., 113 U. S., 753.

As a summary of this case the dissenting opinion of Chief Justice Nott is adopted:

"I can not say that the Nanshan was not an armed vessel, when it appears by the evidence that the Secretary of the Navy ordered her to be armed, and that Commodore Dewey armed her and reported to the Secretary of the Navy that he had done so.

"I can not say that the vessel was not in the service of the United States, when it appears that the United States bought her and manned her and armed her and detailed an experienced officer of the rank of lieutenant to command her.

"I can not say that the vessel did not serve as an armed vessel in the attack on Manila, when her commanding officer testifies that she 'was an integral part of the fleet, as much so as any other ship;' that 'it was a regular fleet formation;' that she was one of the single column of vessels which passed the forts and 'passed through the whole zone of fire;' that 'after passing the forts, the third division, of which the Nanshan was one, came up on the left flank of the other ships and steamed in that order until the lights of the city of Manila were seen ahead.'

"I can not say that the vessel was not within signal distance and able to render effective aid if required, when it appears by the testimony of her commanding officer that she was 'during the time of the action within easy signal and supporting distance and all that time ready to join in battle in case she was ordered to do so or to render assistance to any of the ships,' and that she obeyed every general signal order that was given during the engagement.

"I can not say that the crew of the Nanshan were in the merchant service or acting simply as the crew of an unarmed transport, when it appears by the commanding officer's evidence that they encountered all of the dangers which the men of the regular Navy did from torpedoes and torpedo boats and in passing the forts from the fire of their batteries.

"I can not say that the right given by statute to such men to share in the bounty awarded to a fleet should be defeated because the President had not fixed specifically their rate of pay, when it appears that by his direction, through the Secretary of War, that matter was referred with power to Commodore Dewey, and Commodore Dewey did fix the rate of pay, and that that pay was substantially the rate of pay fixed by the President for seamen and common seamen in the Navy."

Respectfully submitted,

CHARLES W. CLAGETT,

CONRAD H. SYME,

Proctors for Appellant, Edwin F. Stovell.

Supreme Court of the United States.

Nos. 309, 310 and 311.—October Term, 1902.

309 The United States, Appellant,
vs.
George Dewey, Admiral U. S. Navy, &c.

George Dewey, Admiral U. S. Navy, Appellant,
310 *vs.*
The "Don Juan de Austria" et al.

Edwin F. Stovell, on behalf of Himself and Officers and Crew of the U. S. Steamship "Nanshan," Appellant,
311 *vs.*
George Dewey, Admiral U. S. Navy, &c.

Appeals from the Supreme Court of the District of Columbia.

[February 23, 1903.]

These are appeals taken from a decree of the Supreme Court of the District of Columbia, sitting as a District Court of the United States in admiralty, in a suit in prize brought by Admiral Dewey in behalf of himself and the officers and crew of the naval forces on the Asiatic station, taking part in the battle of Manila Bay.

May 1, 1898, Admiral Dewey, being then a Commodore in the United States Navy, with a fleet under his command, engaged a Spanish fleet consisting of the Reina Cristina, Castilla, Don Juan de Austria, Don Antonio de Ulloa, General Lezo, Marques del Duero, Argos, Velasco, Isla de Cuba, Isla de Luzon, Isla de Mindanao, Manila and two torpedo boats, supported by shore batteries, submarine mines and torpedoes. At the close of the battle all these vessels were confessedly destroyed except the Manila, which was captured, and the Don Juan de Austria, Isla de Cuba and Isla de Luzon, in respect of which the facts were these: Under the severe fire of the American fleet they steamed to a position of greater safety, and, after the battle, backed ashore, and when in shallow water their sea valves were opened and they settled on the bottom. They, and other armed vessels, were afterwards set on fire by a detachment from the United States fleet, in obedience to a signal from the flagship when the firing ceased. All captured vessels, not destroyed, were appraised and appropriated to the use of the United States, except one or more private vessels, which were restored to their owners, and not including the Don Juan de Austria, the Isla de Cuba and the Isla de Luzon.

May 3, 1898, Commodore Dewey took possession of the Cavite arsenal, containing a large quantity of naval stores and supplies, and some boats, and he also took possession of certain land batteries. Some of the prop-

erty taken at the arsenal, besides that taken from the sunken vessels, was included in the appraisement.

The protocol between the United States and Spain, signed August 12, 1898, provided as follows: "The United States will occupy and hold the city, bay and harbor of Manila, pending the conclusion of a treaty of peace, which shall determine the control, disposition and government of the Philippines. . . . Upon the conclusion and signing of this protocol, hostilities between the two countries shall be suspended."

About the first of September, 1898, an examination was made of the Don Juan de Austria, the Isla de Cuba and the Isla de Luzon, and the commander-in-chief advertised for bids for raising, repairing and fitting them out. In October he contracted, on behalf of the United States, with a dock company to effect this purpose. The work of raising the vessels was begun on October 29 and finished on November 24. They were then overhauled sufficiently to enable them to proceed to Hong Kong, where they were reconstructed and refitted for use in the United States Navy, of which they became a part.

Full report was made to the Navy Department in July, 1899, of the condition of each of these vessels, upon being raised, and of the progress of reconstruction, including estimates of the value of the vessels when completed, exclusive of armament, and of the cost of raising, fitting out and repairing them. And an appraisement was made in that department of the three vessels when completed, giving the value, and the cost of repairs, from which it also appears that they were first commissioned in the United States Navy in 1900.

Some of the other sunken vessels might probably have been raised to advantage, but no attempt was made to do so, though a small amount of property was taken from them for government use. They were all advertised for sale in September, 1898, but no bids were received.

Shortly after the battle, the commander-in-chief took possession for government use of some cascoes or cargo boats, and two floating derricks belonging to private parties.

The treaty of peace between the United States and Spain provided: "Stands of colors, uncaptured war vessels, small arms, guns of all calibres, with their carriages and accessories, powder, ammunition, live stock, and materials and supplies of all kinds, belonging to the land and naval forces of Spain in the Philippines and Guam, remain the property of Spain."

By virtue of this provision, so much of the public property captured at the Cavite arsenal, and elsewhere on land, remaining unused at the date of the exchange of ratifications, was subsequently restored to Spain.

Actions were instituted for bounty under section 4635 of the Revised Statutes, on account of all the vessels other than the Don Juan de Austria, the Isla de Cuba, the Isla de Luzon and those enumerated in the appraise-

ment, and bounty has been granted under that section for the destruction of those vessels. *Dewey* v. *United States*, 35 Ct. Cl. 172; *S. C.*, 178 U. S. 210.

July 20, 1899, this libel was filed against the Don Juan de Austria, the Isla de Cuba, the Isla de Luzon; all the property taken from them and from the sunken vessels; all the vessels and other property taken afloat, and all the property captured ashore.

The United States filed an answer denying that the Don Juan de Austria, the Isla de Cuba and the Isla de Luzon, the property captured on board of them, the property captured on land, and the cargo boats were subject to condemnation as prize. March 26, 1901, an intervening libel was filed by Edwin F. Stovell, on behalf of himself and the officers and crew of the Nanshan, to which an answer was filed by libellant. The case having been heard, a decree of condemnation and distribution was made November 5, 1901, which adjudged the Isla de Cuba, the Isla de Luzon and the Don Juan de Austria, and the Manila and all other captured vessels named in the appraisement, except such as might have been returned to private owners, and all property captured upon or belonging to any of these vessels, or any vessels sunk or destroyed on May 1, 1898, to be lawful prize of war. All property captured ashore and all non-seagoing craft belonging to the arsenal, as well as all cascoes and the floating derricks not belonging to the King of Spain, were held not to be prize, and as to such property the libel was dismissed. The Nanshan, and the Zafiro, a vessel in the same situation, were held not entitled to share in any of the prize property; and the hostile fleet was held to have been of inferior force to the vessels making the capture. An appeal was taken by the United States, a cross appeal by libellant, and an appeal by the intervenor.

Errors were assigned:

By the United States, that the District Court erred in holding (1) that the vessels of war raised and reconstructed for the navy, with guns, munitions, equipment, stores and other articles found upon them, were lawful prize of war for the benefit of the captors; (2) as also guns, munitions, equipment, stores and other articles on board the Spanish vessels of war sunk or otherwise destroyed, and not restored.

By libellant, that the District Court erred in holding (1) that the property captured at the naval station at Cavite was not lawful prize; (2) that the cascoes were not lawful prize.

By the intervenor, in holding that the Nanshan (and with her the Zafiro) was not entitled to share in the prize property.

Mr. Chief Justice FULLER delivered the opinion of the Court:

Captures in war enure to the government and can become private property only by its grant. The right of the citizen to demand condemna-

tion of vessels or property as prize for his benefit must be derived from acts of Congress, and their scope is not to be enlarged in his favor by construction. *The Siren*, 13 Wall. 389. Although in matters of detail, where there is no controversy in respect of the existence of the grant, a more liberal construction may be applied in carrying the intention of Congress into effect.

The correctness of the decree so far as it related to Spanish seagoing vessels with their equipment and the property found on board of them, captured at the battle or soon afterward, and not restored to their owners, is conceded.

1. The first question to be determined is whether the Don Juan de Austria, the Isla de Cuba, and the Isla de Luzon were properly adjudicated as prize for the benefit of captors in view of their condition immediately after the engagement, and their being subsequently raised, reconstructed, and commissioned in the Navy.

In the consideration of that question we assume that "capture" and "prize" are not convertible terms, and that for the subject of capture to be made prize for the benefit of the captors the taking must meet the conditions imposed by the statutes.

The statutory provisions bearing on the case are to be found in chapter LIV of the Revised Statutes, entitled "Prize," embracing sections 4613 to 4652 inclusive, some of which are given below, together with certain of the "Instructions to Blockading Vessels and Cruisers," issued by General Order, June 20, 1898.*

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* "SEC. 4613. The provisions of this title shall apply to all captures made as prize by authority of the United States, or adopted and ratified by the President of the United States."

"SEC. 4615. The commanding officer of any vessel making a capture shall secure the documents of the ship and cargo, including the logbook, with all other documents, letters, and all other papers found on board, and make on inventory of the same, and seal them up and send them, with the inventory, to the court in which proceedings are to be had, with a written statement that they are all the papers found, and are in the condition in which they were found; or explaining the absence of any documents or papers, or any change in their condition. He shall also send to such court, as witnesses, the master, one or more of the other officers, the supercargo, purser, or agent of the prize, and any person found on board whom he may suppose to be interested in, or to have any knowledge respecting, the title, national character, or destination of the prize. He shall send the prize, with the documents, papers, and witnesses, under charge of a competent prize master and prize crew, into port for adjudication, explaining the absence of any usual witnesses; and in the absence of instructions from superior authority as to the port to which it shall be sent, he shall select such port as he shall deem most convenient in view of the interest of probable claimants, as well as of the captors. If the captured vessel, or any part of the captured property, is not in condition to be sent in for adjudication, a survey shall be had thereon and an appraisement made by persons as competent and impartial as can be obtained, and their reports shall be

Ordinarily the property must be brought in for adjudication, as the question is one of title, which does not vest until condemnation, but it will be seen that by section 4615, if the captured vessel, or any part of the captured property, is not in condition to be sent in for adjudication, a survey and appraisement shall be had, the property sold, and the proceeds deposited subject to the order of the court; and by sections 4624 and 4625, captured vessels and property may be appropriated to the use of the United States, and the money value stand in place of the prize. And proceedings may be had where property which might have been brought in has been entirely lost or destroyed. Adjudication is contemplated in all cases.

By section 4635, a bounty is given for each person on board a vessel of the enemy which is "sunk or otherwise destroyed" in an engagement, of $100 if the hostile fleet is of inferior, and of $200 if of equal or superior, force; and $50 for every person on board at the time of such capture, where the vessels taken are immediately destroyed in the public interest but not in consequence of injuries received in action.

This bounty is to be divided in the same manner as prize money, and the prize money in the one case and the bounty in the other cover the entire results of success.

We agree with counsel for libellant that the words "sunk or otherwise destroyed" are equivalent to "destroyed by sinking or otherwise." There are two general classes then under the statute, vessels destroyed, and vessels captured and condemned, or appropriated.

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sent to the court in which proceedings are to be had; and such property, unless appropriated for the use of the government, shall be sold by the authority of the commanding officer present, and the proceeds deposited with the Assistant Treasurer of the United States most accessible to such court, and subject to its order in the cause."

"SEC. 4624. Whenever any captured vessel, arms, munitions or other material are taken for the use of the United States before it comes into the custody of the prize court, it shall be surveyed, appraised, and inventoried, by persons as competent and impartial as can be obtained, and the survey, appraisement, and inventory shall be sent to the court in which proceedings are to be had; and if taken afterward, sufficient notice shall first be given to enable the court to have the property appraised for the protection of the rights of the claimants and captors. In all cases of prize property taken for or appropriated for the use of the government the department for whose use it is taken or appropriated shall deposit the value thereof with the Assistant Treasurer of the United States nearest to the place of the session of the court, subject to the order of the court in the cause.

"SEC. 4625. If by reason of the condition of the captured property, or if because the whole has been appropriated to the use of the United States, no part of it has been or can be sent in for adjudication, or if the property has been entirely lost or destroyed, proceedings for adjudication may be commenced in any district the Secretary of the Navy may designate; and in any such case the proceeds of any-

The facts before us are somewhat peculiar and serve to illustrate the variant circumstances that may occur in naval engagements, and create modifications of the general classification. These vessels were run ashore and sunk by their own commanders, with the result that they were only temporarily disabled, and the commanding officer of our fleet, in the public interest, as the engagement closed, directed their destruction to be completed by burning. In the report of the action, dated May 4, 1898, they were included among the vessels reported as burnt, but they were not included in the appraisement made by the board of appraisal and survey ordered in accordance with section 4624, and following, of the Revised Statutes, to survey, appraise and take a careful inventory of "enemy's property captured and appropriated for the uses of the United States government." After hostilities were suspended an examination of the wrecks of the Don Juan de Austria, the Isla de Cuba and the Isla de Luzon was made, and subsequently the vessels were raised, under a contract entered into by the commander-in-chief for the government, and

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thing sold, or the value of anything taken or appropriated for the use of the United States, shall be deposited with the Assistant Treasurer in or nearest to that district, subject to the order of the court in the cause. If when no property can be sent in for adjudication, the Secretary of the Navy shall not, within three months after any capture, designate a district for the institution of proceedings, the captors may institute proceedings for adjudication in any district. And if in any case of capture no proceedings for adjudication are commenced within a reasonable time, any parties claiming the captured property may, in any District Court as a court of prize, move for a monition to show cause why such proceedings shall not be commenced, or institute an original suit in such court for restitution, and the monition issued in either case shall be served on the attorney of the United States for the district, and on the Secretary of the Navy, as well as on such other persons as the court shall order to be notified."

"SEC. 4630. The net proceeds of all property condemned as prize, shall, when the prize was of superior or equal force to the vessel or vessels making the capture, be decreed to the captors; and when of inferior force, one-half shall be decreed to the United States and the other half to the captors, except that in case of privateers and letters of marque, the whole shall be decreed to the captors, unless it shall be otherwise provided in the commissions issued to such vessels."

"SEC. 4634. Whenever a decree of condemnation is rendered, the court shall consider the claims of all vessels to participate in the proceeds, and for that purpose shall, at as early a stage of the cause as possible, order testimony to be taken tending to show what part should be awarded to the captors, and what vessels are entitled to share; and such testimony may be sworn to before any judge or commissioner of the courts of the United States, consul or commercial agent of the United States, or notary public, or any officer of the Navy highest in rank, reasonably accessible to the deponent. The court shall make a decree of distribution, determining what vessels are entitled to share in the prize, and whether the prize was of superior, equal or inferior force to the vessel or vessels making the capture. The decree shall recite the amount of the gross proceeds of the prize subject to the

reconstructed. If the vessels had not been raised and saved, they would have remained abandoned as destroyed, but as they were saved and appropriated by the government, they cannot be said in fact to fall within that category. We attach no importance to the official reports referring to the vessels as destroyed, which was true in the sense in which the word was then used, for the question really is whether, when salvage had been effected, the government can maintain that the captors did not take them, but that they were destroyed so that they could not be treated as prize.

The position of the Government is that as these vessels were sunk, and destroyed to such an extent that libellant's naval force was powerless to salve them by its own resources, their subsequent reconstruction and appropriation by the government had no effect on their legal status, which had been determined immediately after the battle.

It is insisted that if not prize then they could not be prize afterwards, and yet it is not denied that when the question of title is settled by decree

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order of the court, and the amount deducted therefrom for costs and expenses, and the amount remaining for distribution; and whether the whole of such residue is to go to the captors, or one-half to the captors and one-half to the United States.

"SEC. 4635. A bounty shall be paid by the United States for each person on board any ship or vessel of war belonging to an enemy at the commencement of an engagement, which is sunk or otherwise destroyed in such engagement by any ship or vessel belonging to the United States or which it may be necessary to destroy in consequence of injuries sustained in action, of one hundred dollars, if the enemy's vessel was of inferior force, and of two hundred dollars, if of equal or superior force, to be divided among the officers and crew in the same manner as prize money; and when the actual number of men on board any such vessel cannot be satisfactorily ascertained, it shall be estimated according to the complement allowed to vessels of its class in the Navy of the United States; and there shall be paid as bounty to the captors of any vessel of war captured from an enemy, which they may be instructed to destroy, or which is immediately destroyed for the public interest, but not in consequence of injuries received in action, fifty dollars for every person who shall be on board at the time of such capture."

Instructions:

"20. Prizes should be sent in for adjudication, unless otherwise directed, to the nearest home port, in which a prize court may be sitting.

"21. The prize should be delivered to the court as nearly as possible in the condition in which she was at the time of seizure; and to this end her papers should be sealed at the time of seizure and kept in the custody of the prize master. Attention is called to articles Nos. 16 and 17 for the government of the United States Navy. (Exhibit A.)

"22. All witnesses, whose testimony is necessary to the adjudication of the prize, should be detained and sent in with her, and, if circumstances permit, it is preferable that the officer making the search should act as prize master.

"23. As to the delivery of the prize to the judicial authority, consult sections 4615, 4616, and 4617, Revised Statutes of 1878. (Exhibit B.) The papers, includ-

it takes effect by relation as of the date of the capture. And because this is so the fact that hostilities had ceased before the vessels were raised becomes immaterial.

The contention is that if a vessel lies on the bottom in shallow water, but in such a condition that she cannot be floated by any of the means ordinarily possessed by a naval force, such vessel must be regarded as "sunk" within the meaning of the statute, even though she has received no structural injury; or if a vessel, though not sunk, be so structurally injured as to destroy her power of floating and she cannot be repaired by any means possessed by the naval forces in the place where she lies, such vessel must be regarded as structurally "destroyed" within the meaning of the statute.

And it is said that a close analogy is furnished by the cases of constructive total loss of a vessel, such as justifies an abandonment to the underwriters. Nevertheless counsel argues that there are differences between those cases and cases under section 4635. Thus, while it is admitted that in the former the owner need not abandon unless he see fit to

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ing the log book of the prize, are delivered to the prize commissioners; the witnesses, to the custody of the United States marshal; and the prize itself remains in the custody of the prize master until the court issues process directing one of its own officers to take charge.

"24. The title to property seized as prize changes only by the decision rendered by the prize court. But, if the vessel itself, or its cargo, is needed for immediate public use, it may be converted to such use, a careful inventory and appraisal being made by impartial persons and certified to the prize court.

"28. If there are controlling reasons why vessels may not be sent in for adjudication, as unseaworthiness, the existence of infectious disease, or the lack of a prize crew, they may be appraised and sold; and if this cannot be done they may be destroyed. The imminent danger of recapture would justify destruction, if there was no doubt that the vessel was good prize. But, in all such cases, all the papers and other testimony should be sent to the prize court, in order that a decree may be duly entered.

Exhibit A.

"ART. 16. No person in the Navy shall take out of a prize, or vessel seized as a prize, any money, plate, goods, or any part of her equipment, unless it be for the better preservation thereof, or unless such articles are absolutely needed for the use of any of the vessels or armed forces of the United States, before the same are adjudged lawful prize by a competent court; but the whole, without fraud, concealment, or embezzlement, shall be brought in, in order that judgment may be passed thereon; and every person who offends against this article shall be punished as a court martial may direct.

"ART. 17. If any person in the Navy strips off the clothes of, or pillages, or in manner maltreats, any person taken on board a prize, he shall suffer such punishment as a court martial may adjudge.

Exhibit B."

[Sections 4615, 4616 and 4617 Rev. Stat.]

do so, the right of election on the part of captors as to whether the vessel should be treated as destroyed or as a prize is denied in the latter; and another difference suggested is that the owner of a submerged or stranded vessel could contract with a third party to raise it, while captors cannot. We think, however, that the alleged differences destroy the analogy altogether, or rather that its application when correctly stated leads to the opposite result. Abandonment rests on the election of the parties, and there was here neither a right of abandonment nor any acts from which abandonment on the one side and acceptance on the other could be fairly inferred.

The public interest required the United States and the captors to preserve the property, if that were possible; and it would be an anomalous conclusion to hold *in invitum* that the United States could pay bounty for these vessels as destroyed and at the same time retain and use them.

The vessels were not derelict, abandoned without hope of recovery, and on the contrary their preservation was recommended, and, in the circumstances, Commodore Dewey having duly taken the steps prescribed by the statute in respect of vessels confessedly captured, was not obliged to determine at once at his peril into which class these particular vessels fell and to literally comply with section 4615 in regard to captured property "not in condition to be sent in for adjudication."

War is not waged for predatory purposes, but Congress chose to grant reward for success, and in doing so cannot be assumed to have intended that such reward should be subjected to the restrictions of close bargains. The intention was that either prize money or bounty should be paid. Of course, by capture without destruction the Government might obtain distinct acquisitions, and the captors would be recompensed at the expense of the enemy.

Circumstances have frequently occurred in which the public interest has required the destruction of vessels capable in themselves of being brought in, as, for example, at the battle of the Nile, when Nelson was obliged to burn prizes in order to avoid the delay in refitting them, and the loss of the service of other ships to convoy them to Gibraltar; but there his government could not assist him, or take the captured vessels off his hands.

Section 4635 provided that bounty should be paid in all cases where an enemy vessel of war was sunk or otherwise destroyed, either in an engagement, or in consequence of injuries received in action, or after capture when the destruction was for the public interest; but the statute does not demand the construction that every vessel must be considered as destroyed, which, though susceptible of salvage and saved, could not have been, and was not saved, by the unaided resources of the capturing force.

It is true that when the Government succeeded in raising and restoring the vessels it saved them for itself, but it may reasonably be held that this

was subject by relation to the right of the captors to an adjudication giving them, after the costs and expenses were deducted, a share in the residue of value.

If the effort at salvage had failed, or if the cost had equaled or exceeded the value, the captors would still be entitled to bounty, for it was not intended that the grant should be defeated by laying them under a rigid rule of election. And on the other hand these vessels were not "appropriated to the use of the United States" by the mere effort of the government to raise them.

The act of raising was not the use contemplated by the statute. Such use was dependent on the success of the effort at salvage. The loss which might have been total, became on success partial, that is, confined to the extent of the expenditure, and the taking possession to accomplish that result, became by success appropriation to use.

The case of the Albemarle is in point, although apparently no opinion ruled the question in terms.

The Albemarle was sunk by Lieutenant Cushing on the night of October 27, 1864; was raised in March, 1865; reached Norfolk, April 27, 1865 and was appropriated to the use of the United States. She was appraised by a duly appointed board of naval officers and the value found was deposited by the Secretary of the Navy with the Assistant Treasurer of the United States at Washington. Proceedings to condemn the Albemarle as prize were instituted in the District Court of the United States for the District of Columbia and went to a decree of condemnation. The case was not reported, but the proceedings will be found in *Swan* v. *United States*, 19 Ct. Cl. 51, in the course of subsequent litigation; as also in *United States* v. *Steever*, 113 U. S. 747. No appeal was taken, and the conclusion that a vessel thus situated could be decreed to be prize was accepted by all the Departments. We perceive no adequate reason to depart from that precedent.

2. As to the property taken from the vessels raised and reconstructed, and that taken from the vessels destroyed, we think its legal status must be regarded as the same as that of the vessel to which it belonged.

By section 4613 it is declared that the provisions of Title LIV shall apply to "all captures made as prize by authority of the United States or adopted and ratified by the President of the United States."

The taking must be under such conditions as make the subject of the capture prize, and the sections preceding section 4635 recognize that property other than vessels may be prize, using the words "ship and cargo," "vessel, arms, munitions or other material," "captured property," "prize property." But section 4635 refers to the destruction of "a ship or vessel of war," which could not be "sunk or otherwise destroyed" under that section, and be "prize" under the preceding sections, and as we have

already said the grant of bounty to be divided "in the same manner as prize money," appears obviously to have been "intended as a substitute for the prize itself," as ruled by Lowell, J., in *The Selma*, 1 Lowell, 30, or as given in lieu of prize money, as observed by Mr. Justice Field, in *Porter* v. *United States*, 106 U. S. 607.

No question of cargo is involved. Cargo is the lading of a ship or vessel, and may be prize when the vessel is not, or the vessel may be, when the cargo is not. The inquiry here relates to things belonging to the outfit of vessels of war, for whose capture prize money is paid, and for whose destruction bounty is paid. The injury to the enemy is the same in either case, but the reward cannot be the same, as it is arbitrary in the one case, and not in the other, and arrived at in accordance with the general rules prescribed as required by the circumstances. The statute did not contemplate a division of the grant and an award of prize money and bounty in respect of the same transaction, unless, indeed, the capture embraced distinct and separate properties.

What is included then by the term a "ship or vessel of war" under section 4635? Whatever the toleration extended in courts of admiralty to the use, in practice, of words apparently superfluous, the word "ship" embraces her boats, tackle, apparel and appurtenances because part of the ship as a going concern, and, for the same reason, "ship or vessel of war" includes her armament, search lights, stores, everything, in short, attached to or on board the ship in aid of her operations.

The first Congressional legislation regulating prize was the act of March 2, 1799, 1 Stat. 715, c. 24, providing:

"SEC. 5. *And be it further enacted*, That all captured national ships or vessels of war shall be the property of the United States—all other ships or vessels, being of superior force to the vessel making the capture, in men or guns, shall be the sole property of the captors—and all ships or vessels of inferior force shall be divided equally between the United States and the officers and men of the vessel making the capture.

"SEC. 6. *And be it further enacted*, That the produce of prizes taken by the ships of the United States, and bounty for taking the ships of the enemy, be proportioned and distributed in the manner following, to wit:

[Then followed twelve subdivisions in respect of the distribution of prize money.]

"13. The bounty given by the United States on any national ship of war, taken from the enemy and brought into port, shall be for every cannon mounted, carrying a ball of twenty-four pounds, or upwards, two hundred dollars; for every cannon carrying a ball of eighteen pounds, one hundred and fifty dollars; for every cannon carrying a ball of twelve pounds, one hundred dollars; and for every cannon carrying a ball of nine pounds, seventy-five dollars; for every smaller cannon, fifty dollars; and for every officer and man taken on board, forty dollars, which sums are to be divided agreeably to the foregoing articles."

These sections admit of no other meaning than that the tackle, sails, apparel, stores, guns, ammunition and other appurtenances of captured national vessels of war should be the property of the United States, as well as the ships themselves, and so of ships or vessels going to the captors.

And the acts of April 23, 1800; July 17, 1862; June 30, 1864, and the Revised Statutes, contain nothing inconsistent with that view.

Parsons, in his work on Marine Insurance, says that "insurance on the ship covers all that belongs to it, as hull, sails, rigging, tackle, apparel, or furniture;" and he quotes from Emerigon (c. 10, § 2, p. 234): "The expression on the body embraces in its generality, as I have just said, all that regards the ship. Such are the hull of the vessel, its rigging and apparel, munitions of war, stores and victualling, advances to the crew, and all that has been expended in the fitting it out." 1 Mar. Ins. 524.

And in his work on Shipping and Admiralty, vol. 1, p. 78, the same author says: "How much passes by the word 'ship,' or the phrase 'ship and her appurtenances,—or apparel,—or furniture,'—or the like, cannot be positively determined by any definition. Stowell and Abbott agree, that whatever is on board a ship for the objects of the voyage and adventure in which she is engaged, belonging to the owners, constitutes a part of the ship and her appurtenances, within the meaning of the English statute of 53 Geo. 3, c. 159."

That was an act "to limit the responsibility of shipowners," and provided that owners should not be liable "further than the value of their own vessel, and the freight due or to grow due," and in several clauses of the act the responsibility was referred to as limited "to the value of the ship with all her appurtenances and freight."

In *The Dundee*, 1 Hagg. 109, the question arose whether the value of certain fishing stores should be included. Lord Stowell held that it should, and that the word "appurtenances," distinguished between cargo, which was intended to be disposed of at the foreign port, and having a merely transitory connection with the ship, and those accompaniments that were indispensable instruments without which the ship could not perform its functions. The owners declared in prohibition in the King's Bench, *Gale* v. *Laurie*, 5 B. & C. 156, and Abbott, C. J., afterwards Lord Tenterden, announced the same conclusion, and, among other things, said: "The fishing stores were not carried on board the ship as merchandise, but for the accomplishment of the objects of the voyage; and we think, that whatever is on board a ship for the object of the voyage and adventure on which she is engaged, belonging to the owners, constitutes a part of the ship and her appurtenances within the meaning of this act, whether the object be warfare, the conveyance of passengers, or goods, or the fishery. This construction furnishes a plain and intelligible general rule; whereas if it should be held that nothing is to be considered as part of the ship that

is not necessary for her navigation or motion on the water, a door would be opened to many nice questions, and much discussion and cavil."

In *The Witch Queen*, 3 Sawy. 201, Judge Hoffman held that, where a vessel was supplied with a diving bell, air pump, and other apparatus for the accomplishment of the enterprise in which she was about to engage, the lien of the materialmen extended to all articles belonging to the owner, which, not being cargo, had been placed on board for the objects and purposes of the voyage. The decision proceeded on our eighth rule in admiralty, referring to "suits *in rem* against a ship, her tackle, sails, apparel, furniture, boats, or other appurtenances"; and *The Dundee*, decided twenty years before the adoption of the rule, was cited as showing the sense in which the term "appurtenances" had been used.

To be sure, the words tackle, sails, apparel, boats, appurtenances, are not used in Title LIV, but we think that such minuteness was unnecessary, and that the words "ship or vessel of war belonging to the enemy" are sufficiently comprehensive to embrace not only everything essential to the ship's navigation, but to the purposes of her existence.

Necessarily there is nothing in the distinction attempted to be drawn between the ship and her "appliances and outfit," nor can we concur in the view that the latter may be regarded as cargo in any aspect.

It is said that the destroyed hostile vessel of war should be held the subject of bounty, and property taken from her the subject of prize money because bounty alone would be an inadequate reward.

This, even if true, would not justify us in attributing to the statute a scope not permitted by its terms.

Section 4635 is couched in the same language as when enacted July 17, 1862, after the battle between the Monitor and the Merrimac had admonished us of the impending change in the construction of vessels of war, yet the bounty provision was re-enacted in 1864, and incorporated into the Revised Statutes, and while in these days the amount of bounty may seem inconsiderable in comparison with the value of the vessel destroyed, we must take the statute as we find it.

3. The battle of Manila was fought on the first day of May, and on the third, the enemy's forces evacuated the Cavite Arsenal, which was taken possession of by a landing party. This naval station contained a considerable amount of arms, munitions and material, for the repairing, equipment and fitting out of ships, and some non-seagoing boats were in use there. The property was appraised in due course; some of it was used in the Navy prior to the exchange of ratifications of the treaty of peace; and the remainder restored to Spain thereafter. The District Court declined to adjudicate this property to be prize because captured on land.

These were naval stores taken at a naval station, by a naval force, as the result of a naval engagement, and the question is whether the fact that

they were taken from a navy yard instead of from a vessel rendered the statute inapplicable.

Generally speaking, forts, cities, lands taken from the enemy, are called conquests; movables taken on land, booty; on the high seas, prize. And the high seas include coast waters without the boundaries of low-water mark, though within bays or roadsteads—waters on which a court of admiralty has jurisdiction. *United States* v. *Ross*, 1 Gall. 624.

Mr. Justice Story and Mr. Wheaton thought that the jurisdiction in prize extended "as well to goods taken on land by a naval force, or in consequence of the operations of a naval force, as to property captured on the water." Wheaton on Captures, 278; Pratt's Story's Notes on Prize Courts, 28; 2 Wheat. App. 1. Both these learned authors cite English authorities, and among them the leading case of *Lindo* v. *Rodney*, Douglas, 613, note.

In that case the property was captured on the island of St. Eustatius, and a writ of prohibition to restrain the prize court was applied for. It was stated that the only question was "whether the goods being taken on land, though in consequence of a surrender to ships at sea, excludes the only prize jurisdiction known in this kingdom." The question was answered in the negative in an elaborate opinion and the rule discharged. Lord Mansfield, among other things, said: "In short, every reason which created a prize court as to things taken upon the high seas, holds equally when they are *thus* taken at land. The original cause of taking is here at sea. The force which terrified the place into a surrender was at sea. If they had resisted, the force to subdue would have been from the sea. Mr. Piggott candidly said, it would be spinning very nicely, to contend, if the enemy left their ship, and got ashore with money, were followed upon land, and stripped of their money, that this would not be a sea capture. I agree with him, but I cannot distinguish that case from this. Both takings are literally upon land. In both, the prey is, as it were, killed at sea, and taken upon land. Here the capture of the goods on land is the immediate consequence of the surrender at discretion to a sea force. Would a sum paid by capitulation upon land have made it a sea or a land prize? *Cui bono*, should all this subtilty be spun, when the reason for a jurisdiction to judge a capture at sea and such a capture at land is exactly the same?"

This reasoning shows that even though the general proposition may have been stated somewhat broadly by Story and Wheaton, circumstances may bring particular cases within it, and that mere contact with land does not *ipso facto* exclude jurisdiction in prize.

In *The Siren*, 13 Wall. 389, 392, Mr. Justice Swayne, speaking for the court, said: "While the American Colonies were a part of the British Empire, the English maritime law, including the law of prize, was the maritime law of this country. From the close of the Revolution down to this time it has continued to be our law, so far as it is adapted to the altered

circumstances and condition of the country, and has not been modified by the proper national authorities."

It was there decided that a seagoing vessel captured by the Army and Navy jointly was not subject of condemnation as prize, and that only captures made by naval force alone were so subject. "Whenever a claim is set up," said the court, "its sanction by an act of Congress must be shown. If no such act can be produced, the alleged right does not exist."

Hence captures are made as prize for the benefit of captors when they come within the scope of our prize statutes, and not otherwise.

In *The Emulous*, 1 Gall. 575, Mr. Justice Story said: "The admiralty, therefore, not only takes cognizance of all captures made at sea, in creeks, havens, and rivers, but also of all captures made on land where the same have been made by a naval force, or by co-operation with a naval force. This exercise of jurisdiction is settled by the most solemn adjudications."

The decree in *The Emulous* was reversed in *Brown* v. *United States*, 8 Cranch, 110, but that was on the ground of the unlawfulness of the taking, and so referred to by Mr. Justice Gray in *The Paquete Habana*, 175 U. S. 711.

In *United States* v. 269½ *Bales of Cotton*, Woolworth, 236, an officer of the Army embarked a battalion of cavalry on vessels of the United States, and in the service of the government, but not part of the naval force, and proceeding by river and by land penetrated into a certain district of Mississippi then held by the enemy, and by force of arms overpowered a body of hostile troops and took from their possession 269½ bales of cotton, which were subsequently libelled. And Mr. Justice Miller, on circuit, held that the cotton was captured by the Army and not by the Navy, and dismissed the libel. While Mr. Justice Miller there remarked that the result of *Brown* v. *United States* was "that property on land is not, without the aid of the statute, liable to capture and condemnation as prize of war," yet after considering many English cases at some length, and referring to *The Emulous* and the case of *Six Hundred and Eighty Pieces Merchandise*, 2 Sprague, 233, he said: "In every one of the cases where the court has sustained its jurisdiction in prize, it appears that the force making the capture, or co-operating in the act, was the naval arm, or, by its presence and active assistance it contributed immediately in effecting the capture; that it operated from the sea; that the place captured was an island, town, or fortress, itself established to resist naval attack, and to support and succor naval expeditions, and accessible from the sea, so that the attacking squadron could directly bring to bear upon it the stress of its armament." And, referring to property captured on land by land forces, he added: "However desirable it may be that, in a war between nations, there should exist a tribunal similar to the prize court, to administer the law of nations with reference to property captured on land, we find no warrant for assert-

ing that any such authority exists in the admiralty courts of the United States, unless the circumstances of the capture show some element of a force operating from, or on, the water, which would bring it within the recognized rules on that subject."

In the case of *Mrs. Alexander's Cotton*, 2 Wall. 404, a joint expedition of gunboats under Rear Admiral Porter and a body of troops under Major General Banks proceeded up the Red River, and, during its advance, seventy-two bales of cotton, the private property of Mrs. Alexander, were taken from her plantation, where they were stored in a cotton-gin house about a mile from the river, by a party from one of the gunboats. The cotton was hauled by teams to the river bank, sent to Cairo, libelled as prize of war in the District Court for the Southern District of Illinois, May 18, 1864; claimed by Mrs. Alexander; sold *pendente lite*, and the proceeds decreed to her. The United States appealed and asked the reversal of the decree and the condemnation of the cotton as maritime prize. This court held that the capture was justified by legislation and by public policy, but that the property was not maritime prize; that there was no authority to condemn any property as prize for the benefit of the captors except under the act of July 17, 1862, 12 Stat. 600, c. 204; and that as the second section of that act provided that "the proceeds of all ships and vessels, and the goods taken on board of them, which shall be adjudged good prize," should be the property of the captors, in whole or in part, property on land was excluded from the category of prize for the benefit of captors, and that this was decisive of the case so far as claims of captors were concerned. The decree was reversed and the cause remanded with directions to dismiss the libel.

In that case the capture was the result of a joint expedition; the property was private property; unprotected and stored at a distance from the river valuable for domestic use, and so valuable as to be of peculiar assistance to the enemy, but not in any sense war material.

In the present case the capture was made by naval force alone; the property was public property, consisting of arms, munitions and naval material; in a naval station taken through the operations of the fleet from the sea.

For the reasons indicated by Mr. Justice Miller, in harmony with the observations of Lord Mansfield, the rulings in that case and in *The Siren* are not controlling in this, and, moreover, the terms of the applicable statute are not the same.

The sections constituting Title LIV of the Revised Statutes were brought forward from the act of June 30, 1864, 13 Stat. 306, c. 174.

Section 2 of the act of July 17, 1862, referred to by Mr. Chief Justice Chase in the case of *Mrs. Alexander's Cotton*, reads as follows: "That the proceeds of all ships and vessels, and the goods taken on board of them,

which shall be adjudged good prize, shall, when of equal or superior force to the vessel or vessels making the capture, be the sole property of the captors; and when of inferior force, shall be divided equally between the United States and the officers and men making the capture."

This section was identical with section 5 of the act of April 23, 1800, and was expressly repealed by section 35 of the act of June 30, 1864, while section 10 of the latter act, afterwards section 4630 of the Revised Statutes, provided: "That the net proceeds of all property condemned as prize shall, when the prize was of superior or equal force to the vessel or vessels making the capture, be decreed to the captors; and when of inferior force, one-half shall be decreed to the United States and the other half to the captors;" and section 33: "That the provisions of this act shall be applied to all captures made as prize by authority of the United States, or adopted and ratified by the President of the United States;" which was re-enacted as section 4613 of the Revised Statutes.

The effect of this legislation was not to revive section 5 of the act of 1800 as contended, nor to give jurisdiction in admiralty in respect of property captured on land by land forces, but if the language of the act of 1862 confined the rights of captors to the proceeds of ships and cargoes, it seems clear that the language of the act of 1864, that the captors should be entitled to "the net proceeds of all property condemned as prize," operated to so far remove the restriction as to permit the statute to extend to other property fairly coming within accepted rules of prize.

The District Court thought the words inadequate to produce this result, and carefully examined other sections of the act of 1864, which referred to vessels and cargoes as the usual subjects of prize. But we should remember that that statute, and Title LIV, into which it was carried, embraced prize in general, and that vessels and their cargoes most frequently constituted prize property brought in for adjudication. So that in making provision in that regard, Congress was obliged to use such terms as even to give color to the argument that enemy's vessels of war could not be condemned at all for the benefit of captors, and that bounty was their only reward, as was the case under the act of 1799. But it is conceded that this is not so, and we think that these sections ought not to be given the restrictive force attributed to them.

We are also unable to see that the significance of the change in phraseology is lessened when considered with the other legislation referred to.

The act of March 12, 1863, (12 Stat. 820, c. 120,) provided for the collection of all abandoned or captured property in insurrectionary districts, and "that such property shall not include any kind or description which has been used, or which was intended to be used, for waging or carrying on war against the United States, such as arms, ordnance, ships, steamboats, or other water craft, and the furniture, forage, military supplies, or

munitions of war." Section 7 read: "That none of the provisions of this act shall apply to any lawful maritime prize by the naval forces of the United States." The property excepted had been declared "lawful subject of prize and capture wherever found;" and it was made the duty of the President "to cause the same to be seized, confiscated, and condemned," by the confiscation act of August 6, 1861, (12 Stat. 319, c. 60.) This act referred to property taken when used, or intended to be used, in waging war against the United States, while the act of 1863 referred to property not so used or intended to be.

By the second section of the act of March 3, 1863, "further to regulate proceedings in prize cases," (12 Stat. 759, c. 86,) it was provided that "any captured vessel, any arms or munitions of war, or other material," might be taken "for the use of the Government," and the value deposited in the Treasury of the United States, and for prize proceedings. This act was expressly repealed by section 35 of the act of June 30, 1864, section 10 of which act, as already seen, provided that the captors might share in the net proceeds of all property condemned as prize.

Section 7 of the act of July 2, 1864, (13 Stat. 377, c. 225,) reads: "That no property seized or taken upon any of the inland waters of the United States by the naval forces thereof, shall be regarded as maritime prize; but all property so seized or taken shall be promptly delivered to the proper officers of the courts, or as provided in this act and in the said act approved March twelve, eighteen hundred and sixty-three." These various acts growing out of the civil war cannot be regarded as having any important bearing on the act of June 30, 1864, and Title LIV, in so far as the particular modification of the act of 1862 is concerned.

And neither these acts, nor sections 5308 to 5311, in respect of insurrection, and par. 9 of section 563, and par. 6 of section 629, Revised Statutes, affect the result we have reached.

In our opinion it would be spinning altogether too nicely to hold that because enemy property on land cannot be taken in prize by land operations, public property designed for hostile uses, and stored on the sea shore in an establishment for facilitating naval warfare, might not be made prize, under the statute, when captured by naval forces operating directly from the sea.

But while the property in question was in general susceptible of condemnation in prize, it was nevertheless taken subject to the exercise of the power of restitution. The right of the Government is supreme, and when in its judgment the public interest demands it, prizes may be restored, and the courts cannot proceed to condemnation.

In *The Elsebe*, 5 Rob. 173, Lord Stowell, then Sir William Scott, decided that up to the period of final condemnation, the Crown can, by virtue of its prerogative, restore a prize to the enemy from whom it has been captured, and may take this step without consulting the captors.

The principle is fully discussed and sustained by unanswerable reasoning, and is not shaken by his subsequent observations in *The St. Ivan*, Edw. 376, that "captors bring in their prizes subject in all cases to such interposition of the Crown; but it is of very rare occurrence, and speaking with all due reverence ought to be of rare occurrence, and only under very special circumstances; as, for instance, where the detention of the vessel may be detrimental to the general interests of the country."

Until condemnation captors acquire no absolute right of property in a prize, though then the right attaches as of the time of the capture, and it is for the government to determine when the public interests require a different destination. In respect of whatever was restored under the treaty with Spain the government must be regarded as absolved from liability.

It further follows from the views we entertain as justifying condemnation of a portion of this property, that the capturing naval force must be held to have been superior within the contemplation of the statute, according to previous decision.

4. The libel was amended some months after it was filed so as to cover certain cascoes or small native boats, and also two floating derricks or wrecking boats, the property of private citizens residing in the Philippine Islands. These cascoes appear to have been large barges, propelled by sweeps and by poling, of from thirty to sixty tons capacity, of the value of from $1,500 to $1,800, Mexican, each, and used in discharging cargoes. The wrecking boats were flat boats, the largest being forty feet long and fifteen feet broad. They had no means of propulsion, were not seagoing boats in any sense, and could only be used in comparatively smooth water. All these boats may have been the private property of Filipinos, but that is not clear.

It may well be doubted if these craft came within the words ship or vessel as used in Title LIV. Whether in the circumstances they could justly be treated as technically enemy property, is a question not so presented as to require discussion. They were put to public use by the commanding officer, but what ultimately became of them does not appear from the record. If restitution was made, they have ceased to be within the jurisdiction. And in any view, we are of opinion that they came within the considerations set forth in *The Paquete Habana*, 175 U. S. 677; and that the District Court rightly held that they were not subject to condemnation.

We are of opinion that the District Court committed no error in its decree in respect of the Don Juan de Austria, the Isla de Cuba and the Isla de Luzon, and the property taken from them, as well as the vessels captured and their appurtenances; or in respect of the lighters and wrecking boats; but that a share in a portion of the naval stores and material captured in the Cavite Arsenal, and the boats pertaining thereto, should

have been awarded; and that the decree should not have included property taken from vessels sunk and destroyed.

And this brings us to consider:

5. The decree dismissing the intervention of Stovell.

This was an intervening libel filed by Edward F. Stovell as captain of the Nanshan, on behalf of its officers and crew, as well as himself, seeking to participate in the prize money that might be awarded on the main libel. Stovell had previously made an application in the Court of Claims to participate in the bounty awarded for vessels destroyed under section 4635 of the Revised Statutes, which was dismissed by that court. 36 Ct. Cl. 392.

The record in the Court of Claims was made the record in the District Court on the intervention of Stovell, and forms part of the record on this appeal. The facts are correctly summarized by Weldon, J., in the opinion of the Court of Claims, as follows:

"The facts found by the court show that the claimant was captain or master of the original crew of the Nanshan, which was a British merchant vessel, purchased by Admiral Dewey at Hong Kong, under authority of the Secretary of the Navy, in April, 1898. The vessel was not commissioned, but was registered as an American steamer, and the original crew was shipped in the American merchant service. The crew were employed to handle the ship, and the officers and men were promised and received double the wages they had theretofore been paid in the British merchant service. They were not rated in the United States Navy, and the double wages were not the rates of pay fixed by the President under authority of Revised Statutes, section 1569. The arrangement as to the employment and payment of the crew was the result of an agreement made by Admiral Dewey with the original officers of the Nanshan. A monthly list of the names and wages of the crew, in Mexican money, was made by the original captain or master, the aggregate amount of which was received by him from the pay inspector of the fleet in a lump sum, reduced to the value of American gold, which money the captain distributed to his original crew.

"Admiral Dewey placed on board a naval officer, Lieut. Benj. W. Hodges, and four enlisted men, and two mounted 1-pounder guns. The master of the Nanshan, Capt. Edwin F. Stovell, remained on board, and under him were shipped the seamen, as aforesaid. The naval officer exercised control over the vessel and gave all orders concerning her. The merchant captain was merely his executive officer, being familiar with the crew. The Nanshan did not approach the Spanish fleet during the battle of Manila near enough to enable her to be of any service. The guns were mounted on her as a protection from boat attacks, but not for offensive operations. At the time and during the battle of Manila, Lieut. Benj. W. Hodges had been detailed as aforesaid with four men of the Navy for duty on said vessel, and was so engaged on said vessel as above stated at and during the time of the battle. The Nanshan was loaded with 3,000 tons of coal. The Raleigh was detailed as a special guard in case the reserve division was attacked separately by the enemy. The duty of the naval captain on said ship was to take general charge of the vessel, execute all orders from the flagship controlling the movements of the Nanshan, the handling of the guns, and the signaling, but not to interfere with the

internal management and discipline of the ship and such things as loading and discharging cargo.

"After the vessel was bought by Admiral Dewey, the Nanshan crossed the China Sea with the fleet and was a part thereof. She kept her position in the fleet. After the fleet stopped at Subig Bay the Admiral ordered her commander to come on board the flagship for his final orders, afterwards returning to the Nanshan. The fleet started in single column, the Olympia leading, followed by the Baltimore, the Raleigh, the Petrel, the Concord, the Boston, the McCullough, the Nanshan, and Zafiro, passing the forts in that order. The forts on the south side of the channel fired upon the fleet as they were entering Manila Bay, and the Nanshan passed through that fire. The Nanshan was in reserve during the action, within signaling distance. She had on board two 1-pounders, taken from the Olympia, with 360 rounds of ammunition for those guns; also 11 rifles from the Raleigh and 11 revolvers, with a suitable mount of ammunition, and two boats rigged ready to lower to pick up men if it was found necessary to do so. The Nanshan was a heavy ship, being loaded to the underwriters' mark with coal.

"At the time and during the battle of Manila the Nanshan was between 4 and 5 miles of the Spanish fleet engaged in that action. She was within signaling distance of the fleet that effected the destruction of the Spanish vessels, but was not in such condition as to afford effective aid, her guns not being able to produce any effect upon the Spanish vessels; she was ordered to lay off in the bay, clear of the fleet; she could not have been brought within effective range, because her guns were too light."

Section 4613 provides: "The term 'vessels of the Navy,' as used in this Title, shall include all armed vessels officered and manned by the United States, and under the control of the Department of the Navy."

Section 4632: "All vessels of the Navy within signal distance of the vessel or vessels making the capture, under such circumstances and in such condition as to be able to render effective aid, if required, shall share in the prize; and in case of vessels not in the Navy, none shall be entitled to share except the vessel or vessels making the captures; in which term shall be included vessels present at and rendering actual assistance in the captures."

The Court of Claims held on the facts that the Nanshan was not at the time of the battle of Manila in such a condition as to enable her to render effective aid, if required; that she was performing the functions of a collier, to be protected instead of to act aggressively; that her crew had never been enlisted in the Navy, but had been employed simply to perform manual labor; that the two 1-pounders and the small arms she had on board were for purposes of defense rather than attack; that "she was not kept in the relation which she sustained to the engagement for strategic purposes, but for the purpose of protection to herself and the incident protection of the rest of the fleet as the source of coal supply;" and that she could not participate in prize money awarded under section 4632.

By the fifth clause of section 4631, which treats of the distribution of prize money, after certain deductions, the remainder is to be distributed "among all others doing duty on board, including the fleet captain, and borne upon the books of the ship, in proportion to their respective rates of pay in the service;" and under section 1569 the pay to petty officers, seamen and others must be fixed by the President. The Court of Claims further decided that as intervenors were shipped and not enlisted, and their pay had not been fixed by the President, but was a matter of agreement with the officer who shipped them, this furnished an additional reason for holding that they were not entitled to share in the prize money.

It is agreed that the decision as to the Nanshan determines the case of the Zafiro.

The District Court adjudged "that the Nanshan and Zafiro, not participating in any of said captures and not being armed vessels of the United States within signal distance of the vessel or vessels making the capture, under such circumstances and in such conditions as to be able to render effective aid, if required, are not entitled to share in any of the prize property."

Notwithstanding the ingenious argument on behalf of the intervention, we are not able to arrive at any different conclusion, and to hold that the Nanshan and Zafiro were part of the fighting force of the Navy in the battle, or present under such circumstances and in such condition as to be able to render effective aid in that engagement, as prescribed by the statute. They participated neither actually nor constructively in the captures.

The rights to share of the commissioned officers and enlisted men of the United States Navy on board these two vessels depend on other considerations.

The decree of the Supreme Court of the District of Columbia on the intervening libel is affirmed. The decree on the libel is reversed and the cause remanded with directions to enter a decree in accordance with this opinion.

True copy.

Test:

Clerk Supreme Court, U. S.